

Supplier Purchase Order (Freelancer) International Terms and Conditions (May 2024)

DRPG TERMS & CONDITIONS

SECTION 1- INTRODUCTION

- 1.1 These Terms & Conditions consist of:
 - 1.1.1 **Section One** - Introduction
 - 1.1.2 **Section Two** – Core Terms;
 - 1.1.3 **Section Three** – Local Terms (United Kingdom);
 - 1.1.4 **Section Four** – Local Terms (United States);
 - 1.1.5 **Section Five** – Local Terms (Germany);
- 1.2 Section Two - the Core Terms shall apply to the Customer's purchase of Goods and Services from the Supplier.
- 1.3 Section Three – Local Terms (United Kingdom) shall apply where the Customer Contracting Entity is registered or located in the United Kingdom.
- 1.4 Section Four – Local Terms (United States) shall apply where the Customer Contracting Entity is registered or located in the United States.
- 1.5 Section Five – Local Terms (Germany) shall apply where the Customer Contracting Entity is registered or located in the Germany.
- 1.6 If there is any conflict or ambiguity between the Core Terms and the applicable Local Terms, the provisions of the Local Terms shall take priority to the extent of any conflict or ambiguity.

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SECTION 2- CORE TERMS

1. Interpretation

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

Definitions:

Affiliate: in relation to the Customer, any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer from time to time.

Business Day: a day other than a Saturday, Sunday or public holiday in the Local Territory when banks are open for business.

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 20.9.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services, comprising these Conditions and the relevant Local Terms.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be interpreted accordingly.

Customer: the Customer Contracting Entity named in the Order.

Customer Contracting Entity: DRP (UK) Limited or an Affiliate.

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

Data Protection Legislation: the data protection and privacy laws and regulations as specified in the Local Terms for the relevant Local Territory.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors, freelancers and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, logos, brand identities, pictures, video, content, computer programs, websites, platform, data, specifications, presentations and reports (including drafts).

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

Dispute Resolution Procedure: the dispute resolution process as set out in the Local Terms.

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.

Insolvency Event: has the meaning provided in the Local Terms for the relevant Local Territory.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, 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.

Local Central Bank: the central bank (or equivalent) in the Local Territory as specified in the relevant Local Terms.

Local Central Bank Rate: the base interest rate of the relevant Local Central Bank from time to time.

Local Courts: the jurisdiction of the country where the Customer Contracting Entity is registered.

Local Insurance Requirement: the insurance coverage the Supplier is required to have in place as specified in the Local Terms for the relevant Local Territory.

Local Laws: the laws of the country where the Customer Contracting Entity is registered.

Local Terms: the terms and conditions applying to the relevant Local Territory as set out at Section 3 (in respect of the United Kingdom), Section 4 (United States) and Section 5 (Germany).

Local Territory: the country where the Customer Contracting Entity is registered or located.

Mandatory Policies: the Customer's policies in force and effect from time to time.

Production Brief: a document produced by the Customer and provided to the Supplier prior to commencement of the Services at particular event or production which will set out the Supplier's further obligations to the Customer.

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, or overleaf, or via the Customer's online portal as the case may be.

Sales Tax: any sales tax which applies in relation to the provision of the Goods and/or Services as specified in the Local Terms for the relevant Local Territory.

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

Service Specification: the description or specification for Services set out in the Order or as agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services whose details are set out in the Order.

Supplier Information: any additional information given to the Supplier by the Customer whether given in writing or verbally.

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 by the Supplier on these Conditions on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order e.g. processing the Order, providing the Customer with some or all of the Goods or Services, issuing an invoice or sending an order confirmation to the Customer via email)

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 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.

3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) comply with the quality standards as set out in the Local Terms;
- (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 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 Supplier shall ensure that at all times when supplying the Goods, it will comply with any Supplier Information.

3.4 The Customer may inspect and test the Goods at any time before delivery. The Supplier 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 Supplier's obligations under the Contract.

3.5 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall either have the right to terminate the Contract or to require the Supplier to immediately take such remedial action as is necessary to ensure compliance.

3.6 The Customer may 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:

- (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 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
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. 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:

- (a) on the date specified in the Order or, if no such date is specified, then as soon as reasonably practicable;
- (b) to such other location as is set out in the Order or as otherwise instructed by the Customer before delivery (**Delivery Location**); and
- (c) in accordance with any Supplier Information or as otherwise 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 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 7.1.

4.5 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 date set out in the Order and for the duration of the Contract, supply 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 that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, comply with all instructions of the Customer, and comply with any Supplier Information given;
- (b) comply with all matters set out in the Production Brief, if one is provided to the Supplier by the Customer;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) only use personnel, subcontractors and freelancers 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;
- (e) 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 Supplier;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) 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;
- (h) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply to the Contract and shall provide the Customer with suitable risk assessments for approval at the Customer's request;
- (j) 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;
- (k) 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; and
- (l) comply with any additional obligations as set out in the Service Specification.

6. Production Brief and Supplier Information

- 6.1** The Customer shall where it deems necessary provide the Supplier with either a Production Brief or Supplier Information prior to the date or dates when the Services are to be provided. The Production Brief or the Supplier Information will contain, without limitation, details of such matters as loading arrangements, performance times, accommodation requirements etc.
- 6.2** Any matters contained within a Production Brief or within Supplier Information will, where relevant, vary any Service Specification which accompanies this Order.
- 6.3** The Supplier shall use its best endeavours to comply with the matters contained within the Production Brief and/or any Supplier Information given in all material respects. Should any matter contained within the Production Brief or any Supplier Information change or affect any of the Supplier's prices or charges, or affect the delivery of any Goods or performance of any of the Services, those changes must be notified by the Supplier to the Customer as soon as reasonably practicable and in any event within 24 hours of the Supplier's receipt of the Production Brief or Supplier Information with full details of how the matters agreed within this Order and varied by the Production Brief or Supplier Information will be affected. If the Supplier does not notify the Customer of any changes in accordance with this clause 6.3, the matters contained within the Production Brief or Supplier Information shall be deemed accepted by the Supplier and shall be performed fully by it, at no additional charge.

7. Customer remedies

- 7.1** If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:
- (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) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; 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.
- 7.2** If the Supplier 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 written notice to the Supplier;

- (b) 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;
- (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.

7.3 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3(e) 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 written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier 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 Supplier attempts to make;
- (e) to recover from the Supplier 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 Supplier's failure to comply with clause 5.3(e).

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 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.

8. Charges and payment

8.1 The price for the Goods:

- (a) shall be the price set out in the Order; and
- (b) shall be inclusive of the costs of packaging, insurance 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 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** In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. 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 30 days of the date of a 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 Sales Tax. Where any taxable supply for Sales Tax purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid Sales Tax invoice from the Supplier, pay to the Supplier such additional amounts in respect of Sales Tax 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 will accrue each date at 2% a year above the Local Central Bank Rate from time to time, but at 2% a year for any period when the Local Central Bank Rate is below 0%. 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 30 days after the dispute is resolved until payment.
- 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 Supplier undertakes to provide the Customer with all information about itself as reasonably requested by the Customer within 5 working days of such request so as to allow the Customer to process the Supplier's invoices and make payments. The Supplier acknowledges that if it fails to provide such information the Customer will not be able to process the invoices or make payment and therefore payment will be delayed and the Customer shall not be liable to the Supplier as a result of such delay.
- 8.9** The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, 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 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

- 8.10** Notwithstanding any other provisions of this Contract, the Customer's obligation to pay the Supplier shall be contingent upon the Customer receiving payment from its own client for the Goods and/or Services provided by the Supplier. If the Customer does not receive payment from its client, the Customer shall not be liable to make any payments to the Supplier until such payment is received. The Supplier acknowledges and agrees that this clause constitutes an essential term of the Contract and accepts the risk of delayed or non-payment from the Customer's client.

9. Intellectual property rights

The Intellectual Property Rights arising out of in connection with the Services (including the Deliverables) and the Goods shall be governed by the provisions of the Local Terms.

10. Indemnity

- 10.1** The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 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.

- 10.2** This clause **10** shall survive termination of the Contract.

11. Insurance

Unless the Order, Production Brief, Supplier Information or any instruction of the Customer states otherwise, during the term of the Contract and for a period of two years thereafter, the Supplier shall maintain in force, with a reputable insurance company, public liability insurance of not less than the Local Insurance Requirement 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.

12. Confidentiality

12.1 The Supplier 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 Customer, except as permitted by clause 12.2.

12.2 The Supplier 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 its rights or carrying out its obligations under the Contract. The Supplier shall ensure that its employees, officers, representatives or advisers to whom it discloses the Customer's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 The Supplier shall not use the Customer's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13. Compliance with relevant laws and policies

13.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, and regulations from time to time in force; and
- (b) comply with the Mandatory Policies.

14. Data protection

Both parties will comply with the applicable requirements of the Data Protection Legislation applying to the Contract as set out in the Local Terms.

15. Limitation of Liability

15.1 Scope of limitations in this clause. The restrictions on liability in this clause 15 apply to every liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Liabilities which cannot legally be limited. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) as specified in the Local Terms for the relevant Local Territory.

- 15.3** Subject to clauses 15.4, 15.5 and 15.6, the Customer's total liability to the Supplier shall not exceed:
- (a) (in the case of Goods) the price paid for the Goods; and
 - (b) (in the case of Services) the charges paid by the Customer to the Supplier in respect of the Services.
- 15.4** Where the Customer terminates this Contract in accordance with clause 16.1(b), it shall not be liable to pay the Supplier any termination or cancellation fee and the Customer's liability to the Supplier shall be limited to:
- (a) the price of the Goods actually delivered and accepted by the Customer as at the date of the termination; and/or
 - (b) the charges for the Services actually provided by the Supplier to the date of termination, calculated on a pro-rata or day rate basis, as the Customer shall determine.
- 15.5** The following types of loss listed in this clause 15.4 are wholly excluded in relation to the Customer's liability:
- (a) Loss of profits;
 - (b) Loss of sales or business;
 - (c) Loss of agreements or contracts;
 - (d) Loss of reputation;
 - (e) Loss of anticipated savings;
 - (f) Loss of use or corruption of software, data or information;
 - (g) Loss of or damage to goodwill;
 - (h) Indirect or consequential loss.
- 15.6** **No liability for claims not notified within one month.** Unless the Supplier notifies the Customer that it intends to make a claim in respect of an event within the notice period, the Customer shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

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 Supplier if:
 - (i) there is a change of Control of the Supplier; or

- (ii) in accordance with clause 3.5 the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1
 - (iii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; the Supplier commits a breach of clause 13 (Compliance with relevant laws and policies);
 - (iv) the Supplier fails or refuses to comply with any matter contained within a Production Brief, any Supplier Information or any other written instruction of the Customer
- (b) with immediate effect for convenience by giving written notice to the Supplier at any time.

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 which breach is irremediable or (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 is subject to an Insolvency Event; or
- (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.

17. Consequences of termination

17.1 On termination of the Contract, 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 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.

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

18.1 **Event Outside Reasonable Control** means any circumstance not within the Customer's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other 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, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by its customers, clients, suppliers, subcontractors or freelances; and
- (i) interruption or failure of utility service.

18.2 If the Customer is prevented, hindered or delayed in or from performing any of its obligations under this agreement by an Event Outside Reasonable Control the Customer shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19. Dispute

If any dispute arises in connection with this Contract which cannot be resolved by the parties discussing the matter in good faith, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with Dispute Resolution Procedure.

20. General

20.1 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 Supplier 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.

20.2 Subcontracting. The Supplier 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 Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors and freelances as if they were its own.

20.3 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by a pre-paid next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if 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 at the time recorded by the delivery service.
- (c) This clause 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.
- (d) A notice given under the Contract is not valid if sent by fax or email.

20.4 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 this agreement. If any provision of the Contract is deemed deleted under this clause **20.4** 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.

20.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.6 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.

20.7 Entire agreement. The Contract and any document referred to in it (to include the Production Brief, the Supplier Information and any other instructions given by the Customer to the Supplier) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.8 Third party rights. Unless it expressly states otherwise, no third party shall have the right to enforce any term of the Contract.

- 20.9 Variation.** Except as set out in these Conditions and subject to clause 6 (Production Brief and Supplier Information), no variation of the Contract by the Supplier, 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. The Customer may vary the terms contained within this Contract at any time without requiring the written consent of the Supplier.
- 20.10 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 construed in accordance with the Local Laws.
- 20.11 Jurisdiction.** Each party irrevocably agrees that the Local Courts 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.

SECTION 3- LOCAL TERMS (UNITED KINGDOM)

1. Applicability

- 1.1 The following Local Terms shall apply to the Customer Contracting Entity which is registered or located in the United Kingdom.

2. Interpretation

The following definitions and rules of interpretation apply in these Local Terms.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Insolvency Event: 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.

Local Central Bank: the Bank of England.

Local Insurance Requirements: public liability insurance of £2,000,000 (two million pounds) per claim.

Sales Tax: value added tax.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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

3. Supply of Goods

For the purposes of clause 3.1(b) of the Conditions, the Goods shall 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.

4. Intellectual property rights

- 4.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including those contained within the Deliverables, shall vest in the Customer unless

otherwise agreed between the parties in writing. The Supplier hereby irrevocably assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights, including copyright, with full title guarantee to the Customer. This assignment includes all rights to reproduce, distribute, modify, display, and perform the works.

4.2 The Supplier shall do and execute, or arrange for the doing and executing of, each necessary act, document, and thing that the Customer may consider necessary or desirable to perfect the right, title, and interest of the Customer in and to the Intellectual Property Rights in or arising out of or in connection with the Services.

4.3 The Supplier hereby irrevocably waives all moral rights (including the right to be identified as the author and the right to object to derogatory treatment) in the Intellectual Property in or arising out of or in connection with the Services and the Deliverables.

4.4 The Supplier:

- a) warrants that the receipt, use and supply of all Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables by the Customer and its Affiliates and licensees shall not infringe with the rights, including any Intellectual Property Rights, of any third party; and
- b) shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.

4.5 All Customer Materials will remain the exclusive property of the Customer. The Customer grants the Supplier a non-exclusive and non-transferable licence solely to use the Customer Material for the purposes of supplying the Services to the Customer and for no other purpose.

5. Data Protection

5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.2 In this clause 5, **Applicable Laws** has the meaning set out in the Local Terms for the relevant Local Territory means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic Law** means the UK Data Protection Legislation and any other law that applies in the UK.

- 5.3** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 5.4** Without prejudice to the generality of clause 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 5.5** Without prejudice to the generality of clause 5.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

5.6 The Customer does not consent to the Supplier appointing any third party processor of personal data under the Contract.

5.7 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

6. Limitation of Liability

For the purposes of clause 15.2(c) of the Conditions, nothing in this Contract limits any liability which cannot legally be limited relating to a breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7. Dispute Resolution Procedure

If any dispute arises in connection with this Contract which cannot be resolved by the parties discussing the matter in good faith, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 15 working days of notice of the dispute, the mediator will be nominated by CEDR.

SECTION 4- LOCAL TERMS (UNITED STATES)

8. Applicability

- 8.1 The following Local Terms shall apply to the Customer Contracting Entity which is registered or located in the United States.

9. Interpretation

The following definitions and rules of interpretation apply in these Local Terms.

Data Protection Legislation: Applicable data protection legislation including but not limited to, the California Consumer Privacy act, the UK Data Protection Legislation and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Insolvency Event: 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.

Local Central Bank: the US Federal Reserve.

Local Insurance Requirements: general liability insurance of US\$ 2,000,000 for each and every claim.

Sales Tax: value added tax or any equivalent tax chargeable in the United States or elsewhere

10. Supply of Goods

For the purposes of clause 3.1(b) of the Conditions, be of satisfactory quality 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

11. Intellectual property rights

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including those contained within the Deliverables, shall vest in the Customer unless otherwise agreed between the parties in writing. The Supplier hereby irrevocably assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights, including copyright, with full title guarantee to the Customer. This assignment includes all rights to reproduce, distribute, modify, display, and perform the works.

- 11.2** The Supplier shall do and execute, or arrange for the doing and executing of, each necessary act, document, and thing that the Customer may consider necessary or desirable to perfect the right, title, and interest of the Customer in and to the Intellectual Property Rights in or arising out of or in connection with the Services.
- 11.3** The Supplier hereby irrevocably waives all moral rights (including the right to be identified as the author and the right to object to derogatory treatment) in the Intellectual Property in or arising out of or in connection with the Services and the Deliverables.
- 11.4** The Supplier:
- a) warrants that the receipt, use and supply of all Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables by the Customer and its Affiliates and licensees shall not infringe with the rights, including any Intellectual Property Rights, of any third party; and
 - b) shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.
- 11.5** All Customer Materials will remain the exclusive property of the Customer. The Customer grants the Supplier a non-exclusive and non-transferable licence solely to use the Customer Material for the purposes of supplying the Services to the Customer and for no other purpose.

12. Data Protection

- 12.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 12.3** Unless the parties agree otherwise in writing, the Supplier will retain any personal data supplied by the Customer for a period of three months after the Project Delivery Date. Where the personal data is deemed by the Agency to be particularly sensitive, the period shall be one week after the Project Delivery Date.
- 12.4** The Customer consents to the Supplier appointing its suppliers, agents, contractors or freelancers as Third-party processors of personal data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the Third-party processors into a written agreement to reflect the requirements of the Data Protection

Legislation. As between the Customer and the Supplier, the Agency shall remain fully liable for all acts or omissions of any Third-party processor appointed by it pursuant to this clause 5.

- 12.5 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

13. Limitation of Liability

- 1.1 NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, OR LIABILITY FOR BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY OR THEIR REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 1.2 MAXIMUM LIABILITY FOR DIRECT DAMAGES. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, OR LIABILITY FOR BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED 105% (ONE HUNDRED AND FIVE PERCENT) OF THE TOTAL OF THE AMOUNT PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO COMPANY PURSUANT TO THIS AGREEMENT IN RELATION TO THE ASSIGNMENT WHICH FORMS THE BASIS OF THE CLAIM DURING THE 20 WEEKS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR \$50,000 (Fifty Thousand), WHICHEVER IS LESS.
- 1.3 **No liability for claims not notified within one month:** Unless the Supplier notifies the Customer that it intends to make a claim in respect of an event within the notice period, the Customer shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14. Dispute Resolution Procedure

14.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in a Project Plan, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, both the Agency's and the Client's directors responsible for the Project Plan shall attempt in good faith to resolve the Dispute. The director from the Agency shall, where appropriate, suggest a course of action in an attempt to rectify a dispute which shall form the basis of the parties discussion;
- (b) if the Agency's and the Client's directors responsible for the Project Plan are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

14.2 No party may commence any court proceedings under clause 32 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

15. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved in accordance with clause 20.11.

SECTION 5- LOCAL TERMS (GERMANY)

1. Applicability

- 1.1 The following Local Terms shall apply to the Customer Contracting Entity which is registered or located in Germany.

2. Interpretation

The following definitions and rules of interpretation apply in these Local Terms.

Data Protection Legislation: The respective applicable data protection provisions in the jurisdictions involved at the time of the conclusion of the contract, including future amendments

EU GDPR: the General Data Protection Regulation ((EU) 2016/679)

German Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in Germany including EU GDPR;; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) as amended.

Insolvency Event: 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.

Local Central Bank: the Deutsche Bundesbank.

Local Insurance Requirements: public liability insurance of €2,000,000 (two million pounds) per claim.

Sales Tax: value added tax or any equivalent tax chargeable in Germany or elsewhere

3. Supply of Goods

For the purposes of clause 3.1(b) of the Conditions, 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.

4. Intellectual property rights

- 4.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including those contained within the Deliverables, shall vest in the Customer unless otherwise agreed between the parties in writing. The Supplier hereby irrevocably assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property

Rights, including copyright, with full title guarantee to the Customer. This assignment includes all rights to reproduce, distribute, modify, display, and perform the works.

- 4.2** The Supplier shall do and execute, or arrange for the doing and executing of, each necessary act, document, and thing that the Customer may consider necessary or desirable to perfect the right, title, and interest of the Customer in and to the Intellectual Property Rights in or arising out of or in connection with the Services.
- 4.3** The Supplier hereby irrevocably waives all moral rights (including the right to be identified as the author and the right to object to derogatory treatment) in the Intellectual Property in or arising out of or in connection with the Services and the Deliverables.
- 4.4** The Supplier:
- a) warrants that the receipt, use and supply of all Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables by the Customer and its Affiliates and licensees shall not infringe with the rights, including any Intellectual Property Rights, of any third party; and
 - b) shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.
- 4.5** All Customer Materials will remain the exclusive property of the Customer. The Customer grants the Supplier a non-exclusive and non-transferable licence solely to use the Customer Material for the purposes of supplying the Services to the Customer and for no other purpose.

5. Data Protection

- 5.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.2** In this clause 5, **Applicable Laws** has the meaning set out in the Local Terms for the relevant Local Territory means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic Law; and **Domestic Law** means the German Data Protection Legislation and any other law that applies in Germany.
- 5.3** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

- 5.4** Without prejudice to the generality of clause 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 5.5** Without prejudice to the generality of clause 5.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

5.6 The Customer does not consent to the Supplier appointing any third party processor of personal data under the Contract.

5.7 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

6. Limitation of Liability

7. For the purposes of clause 15.2(c) of the Conditions, nothing in this Contract limits any liability which cannot legally be limited including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8. Multi-tiered Dispute Resolution Procedure

8.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided otherwise in a Project Plan, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, both the Agency's and the Client's directors responsible for the Project Plan shall attempt in good faith to resolve the Dispute. The director from the Agency shall, where appropriate, suggest a course of action in an attempt to rectify a dispute which shall form the basis of the parties discussion;
- (b) if the Agency's and the Client's directors responsible for the Project Plan are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve

notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

- 8.2** No party may commence any court proceedings under clause 32 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 8.3** If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 20.11.

END OF TERMS