

TERMS & CONDITIONS of PURCHASE

WHITEHALL HOMES LLP

1. INTERPRETATION

1.1. Definitions. In these Conditions, the following definitions shall apply:

Business Day shall mean a day (excluding Sunday or public holiday excepted as instructed by WHH).

Conditions shall mean the terms and conditions set out in this document as amended from time to time in accordance with clause 15.11.

Contract shall mean the Contract between WHH and the Supplier for the purchase of the Goods or the provision of Services in accordance with these Conditions.

WHH shall mean Whitehall Homes LLP, its authorised representatives and successors in title.

WHH Material shall mean all materials, parts, equipment, tools, drawings, specifications, owned or part owned by and/or supplied by WHH.

Client or Clients shall mean WHH's customers and/or buyers of its properties which will utilise the Goods and/or Services provided by the Supplier.

Delivery or Deliver or Delivered shall mean upon completion of unloading the Goods at the destination set out in the Purchase Order or such place as instructed by WHH or acceptance of the Services as defined in clause 4.

Goods and/or Services shall mean the Goods and/or Services (or any part of them) set out in the Purchase Order or other relevant documentation or instruction provided by WHH.

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

Party or Parties shall mean either WHH, or the Supplier or collectively together, as the case may be.

Payment Certificate shall mean a certificate issued to the Supplier upon satisfactory completion of the VO and/or Purchase Order works allowing Supplier to invoice under the terms set out in clause 7.

Prime Costs shall mean maximum sum set out within the PO or VO for the works and the final sum being agreed on completion of the works.

Purchase Order (PO) shall mean WHH's Purchase Order or Supplier Order for the Goods and/or Services to be supplied as confirmed by a Purchase Order Certificate issued by the company.

Satisfactory Completion shall mean the completion of all elements of the Contract requirements, including but not limited to, WHH authorised signature on approved Quality Control Completion Documentation, the completion of testing and commissioning, the supply of all required certifications and manuals to WHH.

Specification or Statement of Work (SOW) shall mean the Specification(s) or SOW for the Goods and/or Services, including any related plans and drawings which are agreed in writing by WHH.

Supplier shall mean the person or organisation from whom WHH purchases the Goods and/or Services.

Variation Order (VO) shall mean any agreed work over above the Contract sum and shall only be approved by authorised WHH personnel.

Variation Order Certificate (VOC) shall mean an approved Certificate provided by WHH to Supplier to commence work.

1.2. Construction of the Contract. In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a Party includes its personal representatives, successors or permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) A reference to writing or written includes faxes and electronic mail except where expressly excluded by these conditions.

2. BASIS OF CONTRACT

- 2.1. These Conditions, and any special terms which may appear on the face of any Purchase Order, and/or separately on any written communication, apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, save to the extent that exclusion is prohibited by law. Any special terms appearing on the face of any Purchase Order and/or separately on any written communication from WHH which conflict with these Conditions, shall take precedence over these Conditions.
- 2.2. The Purchase Order constitutes an offer by WHH to purchase the Goods and/or Services in accordance with these Conditions.
- 2.3. The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing a written unqualified acceptance of the Purchase Order; and
 - (b) the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.

3. THE GOODS AND/OR SERVICES

- 3.1. The Supplier shall, from the commencement and for the duration of the Contract, including but not limited to any specified warranty period, provide and ensure that the Goods and/or Services, including any warranty repair or rectification activities shall, where applicable:
 - (a) correspond with their description, duration and any WHH applicable Specification(s), technical drawings, or programme. Supplier provided samples and/or other descriptions given by or provided to the Supplier and the Supplier shall include any clear installations or guide instructions; and
 - (b) where any discrepancy arises between the written WHH Specification(s) and/or technical drawings the WHH Specification(s) and/or technical drawings as deemed by WHH shall take precedence and the Supplier shall meet these requirements without prejudice to WHH and at no additional cost to WHH.
 - (c) any work required over and above the work set out in any Contract shall be agreed by the means of a Variation Order (VO). Upon satisfactory completion of such work WHH will issue Payment Certificate, however, work under the Contract or any other Contract with the Supplier not affected by the VO shall without prejudice continue as contracted.
 - (d) where at the outset of any Contract the WHH Specification is not known these will be added via a VO and shall be implemented at no additional cost to WHH unless previously agreed in writing.
 - (e) any re measurement shall be only required solely from a change in the agreed Specification and which shall only be authorised via a signed and approved VO. Any work undertaken prior to the receipt of an approved VO will not be payable.
 - (f) be of satisfactory quality (within the meaning of the Sale of Goods and/or Services Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by WHH expressly or by implication, and conform to the requirements of any relevant prevailing code and regulations and of this clause 3. In this respect WHH relies on the Supplier's skill and judgement; and shall
 - (g) use the best quality goods, materials, standards and techniques, and ensure that all Goods and/or Services supplied, used by and/or transferred to WHH, will be free from defects in design, material and workmanship and remain so for a period of no less than (i) twelve (12) months for purchase classified as Commercial Off The Shelf (COTS) and (ii) twenty four (24) months for all other purchases in each case following Delivery, or and (iii) for a period of ten (10) years as required by the appropriate industry standards or any longer period offered by the Supplier, whichever is the later as described above. For the avoidance of doubt classification shall be at the sole discretion of WHH Purchasing Department or such other authorised WHH personnel; and
 - (h) any Supplier carrying out installation and/or finishing activities are responsible and shall insure they have the appropriate qualified resources, applicable installation and/or guide instructions and/or specifications in place and available prior to the commencement of any work and carry out the appropriate action in accordance with those installation, guide instructions or any relevant code of practices without prejudice to WHH; and
 - (i) comply with the provisions and requirements of all applicable EU Regulations and Directives in effect from time to time including, but not limited to, EU Directives 2002/95/EC (the restriction of the use of certain hazardous

substances in electrical and electronic equipment) and 2002/96/EC (waste electrical and electronic equipment). The Supplier shall provide to WHH documentary evidence of the Goods and/or Services compliance with applicable EU Regulations and/or Directives and shall further ensure that the Specification complies with and reflects and references any applicable EU Regulations and/or Directives. Compliance with EU Directives shall extend beyond any subsequent enactment of the above-referenced EU Regulations and/or Directives or their equivalents into English Law; and

- (j) comply with all applicable statutory, regulatory and/or requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods and/or Services; and
 - (k) if no packaging requirements are set out then this shall be retail trade pack suitable to reach its destination in a condition which renders the Goods and/or Services fit for purpose; and
 - (l) co-operate with WHH in all matters relating to the Goods and/or Services, and comply with all reasonable instructions of WHH; and
 - (m) WHH has contracted the Supplier as a leader in the Suppliers industry and as such is reliant on the Supplier to perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; and
 - (n) not under any circumstances use personnel who are not authorised to work in the United Kingdom on any Contract with WHH; and
 - (o) use personnel who are suitably skilled experienced and, where necessary, accredited to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract; and
 - (p) where requested by WHH, the Supplier shall inform WHH of any intended change to critical experienced member of the Supplier employed on any WHH work and advise of any change to that member of staff including a mitigation plan on the effect of that change.
 - (q) provide all equipment, tools and vehicles and such other items as are required to provide the Goods and/or Services; and
 - (r) observe all WHH and legal health and safety rules and regulations and any other security requirements that apply in the provisions of the Goods and/or Services and where applicable comply with WHH Site Protection Policy; and
 - (s) not do or omit to do anything which may cause WHH to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that WHH may rely or act on the Services.
 - (t) notify WHH in a reasonable time and give WHH, at its discretion, reasonable opportunity to make a last time buy of the Goods or the part or parts thereof affected if during the fulfilment of this Contract, and notwithstanding the completion of the Contract, the Supplier becomes aware of any obsolescence that may occur.
 - (u) notify WHH immediately in the event that it is unable or does not want to supply any portion of the contracted supply the Goods and/or Services in which case WHH shall retain the right to implement Clause 5.
 - (v) If any Supplier and/or third party (referred to as the Requester for the purposes of this clause only) should seek or request (whether verbal or in writing) any comments (including but not limited to thoughts or observations) on any design or Goods or Services from any person employed by WHH these are merely provided as suggestions and in no way whatsoever mitigates, or replaces the liability (including but not limited to the design workmanship or materials) for the product(s) or Service(s) of the Requester whether or not the Requester is in direct contract with WHH now or in the future. Should WHH make such comments (as described above) and be implemented or incorporated into any Goods and/these shall become the property of WHH under clause 8 and be subject to a payable royalty fee from the Supplier(s).
- 3.2. The Supplier shall not be entitled to reject any claim made in respect of any defect arising within the period stated in 3.1 (c) above on the basis that WHH failed to make a claim during such period.
- 3.3. 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.
- 3.4. WHH shall, with reasonable notice, have the right to inspect and/or test the Goods and/or Services at the Suppliers' or his sub-contractor(s) premises at any time before Delivery.
- 3.5. If following such inspection or testing carried out under clause 3.4, WHH considers that the Goods and/or Services do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, WHH shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

- 3.6. Notwithstanding any such inspection or testing carried out under clause 3.4, the Supplier shall remain fully responsible in all respects for the Goods and/or Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and WHH shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.7. Where under this Contract, WHH provides the Supplier with any WHH Material, WHH hereby grants the Supplier a non-exclusive, revocable on demand, non-transferable licence to use the WHH Material solely for the purpose of the Contract and such WHH Material shall be returned to WHH immediately on completion and/or expiry of the Contract.
- 3.8. The Supplier shall separately store and identify any Goods and part(s) thereof and (where applicable) Services which are intended for use in the fulfilment of this Contract and/or for which completion of manufacture or productions has been affected and which await delivery to WHH.
- 3.9. No approval by WHH of any design furnished by the Supplier shall constitute a waiver by WHH of the Supplier's obligations hereunder. The warranties of the Supplier, together with its service warranties and guarantees, shall enure to the benefit of WHH, and shall survive inspections, acceptance and payment.
- 3.10. Where the provision of any Goods and/or Services requires the Supplier, its employees, agents or sub-contractors to work on WHH's sites or Clients' premises those personnel shall at all times comply with the rules and regulations of WHH including, but not limited to Health and Safety and access requirements. WHH reserves the right to remove any personnel from its premises in the event of misconduct or non-compliance with requirements.
- 3.11. The Supplier shall not halt and/or alter any Goods or Services on any Contract with WHH in the event that WHH does not agree with any changes to the Specification(s) or drawing(s) on any particular or given Contract. In the event the Supplier fails to comply with this clause WHH retains the right to implement clause 5.
- 3.12. The Supplier shall uphold a duty of care to WHH and shall use their best endeavours and foresight to meet its contractual obligations including build/programme sequence and to avoid any mis sequence of work, misuse of resources and material that would result in additional and/or reinstatement and/or rework. Any such occurrence the Supplier accepts full liability, including but not limited to, the Suppliers own costs but any additional costs incurred by WHH.
- 3.13. The Supplier shall obtain unequivocal written confirmation from WHH 14-days prior to mobilization of services and any abortive costs or damages incurred as a result of mobilization within 14-days shall be the Supplier's risk and shall not be payable by WHH.

4. DELIVERY & ACCEPTANCE

- 4.1. The Supplier shall Deliver the Goods and/or perform such Services at its own risk at the place and on the date(s) specified in the Purchase Order, SOW or other instruction from WHH during WHH's normal business hours, or as instructed by WHH. Time of Delivery of the Goods or performance of the Services shall be of the essence of this Contract.
- 4.2. Where applicable, the Supplier shall ensure that:
- (a) the Goods (or where the Services require parts to be Delivered, the parts) are properly packed and secured in such manner as to enable them to reach their destination in a good condition such that the Goods and/or Services or parts remain fit for their purpose;
 - (b) any consignment of Goods and/or Services shall be accompanied by an Advice Note and/or Release documentation which shall show the Purchase Order number, the description, part number and quantity of the Goods and/or Services, special storage instructions (where applicable) and, if the Goods and/or Services are being Delivered by instalments, the outstanding balance of Goods and/or Services remaining to be Delivered; and
 - (c) any Goods delivered as directed under the terms of the Contract shall remain the property and responsibility of the Supplier until either accepted by WHH under the terms of the Contract or put into use or service by WHH as defined in the Contract. These include, but not limited to, to storage on any WHH site or property and any warranty issues.
 - (d) if the Supplier requires WHH to return any packaging material to the Supplier, that fact is to be clearly stated on the Advice or Release note. Any such packaging material shall be returned to the Supplier at the cost and risk of the Supplier.
- 4.3. Acceptance of the Goods shall take place upon being put into service by WHH or within thirty (30) Business Days of receipt of the Goods or such period as may be set out in any relevant Statement of Work whichever is the later. Acceptance of Services shall be made on approval of any applicable documentation defined by WHH, or where no such documentation is stipulated acceptance of the Service shall be deemed to be made following payment of the relevant invoice(s) unless WHH has notified the Supplier to the contrary in writing.

- 4.4. Should the Goods and/or Services or any part thereof be rejected within the acceptance period, as specified in 4.3 above, WHH shall be entitled to withhold payment for the rejected Goods and/or Services. At WHH's sole option, it may either cancel the whole of the Purchase Order, or the portion of the rejected Goods and/or Services, or require the Supplier to replace the rejected Goods and/or Services within ten (10) Business Days or such other period as stipulated by WHH.
- 4.5. Where Goods and/or Services need to be repaired and/or replaced these shall be carried out within 10 (Business days) or such other period stated by WHH.
- 4.6. Rejected Goods shall be made available for the Supplier to collect or shall be returned to the Supplier at the Supplier's cost. Where rejected goods are not collected WHH reserves the right to appropriately dispose of these at the Suppliers own risk and expense.
- 4.7. Any WHH signature on any Delivery note or other completion documentation accompanying the Goods and/or Services will not signify acceptance of the quality or quantity of the Goods and/or Services stated notwithstanding any wording on the Delivery note or other documentation to the contrary.
- 4.8. If the Supplier Delivers less than one hundred per cent (100%), or more than one hundred per cent (100%), of the total quantity of Goods ordered, WHH may at its discretion reject the Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier Delivers more than the quantity of Goods contracted for, and WHH accepts the Delivery in good faith and not by error, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.9. The Supplier shall not Deliver the Goods in instalments without WHH's prior written consent. Where it is agreed that the Goods are to be Delivered by instalments, they may be invoiced and paid for separately in accordance with such agreement. However, failure by the Supplier to Deliver any one instalment on time or at all or any defect in an instalment shall entitle WHH to the remedies set out in clause 5.
- 4.10. Where delivery is agreed by instalments or where Goods are under delivered these shall be considered as late deliveries and payment made upon completion of the total deliveries under Contract unless WHH shall impose remedies as set out in clause 5.
- 4.11. Should the delivery delay result in costs being incurred by WHH as a direct result of the delay these costs shall be charged to the Supplier plus twenty five percent (25%) administration charge.

5. REMEDIES

- 5.1. If the Goods and/or Services are not Delivered on the date they are due as referred to in clause 4.1, or do not comply with the Supplier's obligations set out in clause 3 (or clause 5.3), or withdraws from the Contract(s) then, without limiting any of its other rights or remedies, WHH shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods and/or Services:
- (a) to terminate the Contract without any claim for loss of revenue or profit;
 - (b) to reject the Goods and/or Services (in whole or in part) and where appropriate 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 and/or Services, or to provide a full refund of the price of the rejected Goods and/or Services;
 - (d) to refuse to accept any subsequent Delivery of the Goods and/or Services which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by WHH in obtaining substitute or replacement Goods and/or Services from a third party; and
 - (f) to claim damages for any other costs, damage, loss or expenses incurred by WHH which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
 - (g) in the event that a pre-payment or deposit has been made by WHH this shall be immediately repaid to WHH. Interest shall be become payable to WHH in the event of any delay.
- 5.2. Without prejudice to the provisions of clauses 4.1, 5.1 and other relevant provisions of this Contract, if the Goods and/or Services are not Delivered on the due date WHH may at its option claim or deduct one per cent (1%) of the price of the Goods and/or Services for each week's or part thereof delay in Delivery by way of liquidated damages, up to a maximum of twenty five per cent (25%) of the total price of the Goods and/or Services. The Supplier agrees and acknowledges that this amount for the purposes of this clause 5.2 is a genuine pre-estimate of WHH's loss.
- 5.3. In the event that the delivery delay results in additional costs to WHH as a direct result of the delay the costs shall be charged to the Supplier plus twenty five percent (25%) administration charge.
- 5.4. These Conditions shall apply to any repaired or replacement Goods and/or Services supplied by the Supplier whether repaired or replaced under warranty or not.

5.5. Where applicable such other costs chargeable to the Supplier shall be stated in the Purchase Order.

6. TITLE AND RISK

- 6.1. Unless otherwise stated in this Contract, risk in the Goods and/or Services shall pass to WHH on completion of Delivery or signature of any relevant agreed acceptance document whichever first occurs.
- 6.2. Title shall pass to WHH upon receipt of the Goods or upon payment whichever first occurs. Where any Goods are retained by the Supplier for and on behalf of WHH, title shall pass upon receipt of the Goods at the premises or stored place of the Supplier.

7. PRICE AND PAYMENT

- 7.1. The price of the Goods and/or Services shall be the price set out in the Purchase Order however should the prices set out in the Purchase Order not include the appropriate or agreed discounts then these will apply, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence including such discounts as WHH may be entitled to.
- 7.2. Where payments are required or applicable to take into account the Construction Industry Scheme (referred to as CIS) payments shall be made deducting the necessary amount.
- 7.3. The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (VAT), but shall include the costs of installation, packaging, insurance, all duties and levies payable and carriage of the Goods and/or Services to the destination specified by WHH. No extra charges shall be effective unless agreed in writing by WHH.
- 7.4. Supplier shall clearly set out and evidence any permitted disbursement costs payable at the outset of the Contract and/or on any VO's and, where appropriate to be included on any Purchase Order. WHH will not accept any additional cost not previously stated or identified on any PO, VO or Payment Certificate.
- 7.5. Where appropriate Prime Costs set out in any PO or VO at the outset of the works are set out as a maximum budget for the work but shall be finally agreed prior to the commencement of any work.
- 7.6. Where a stage payment plan for any works is agreed prior to work commencing invoices are to be submitted as set out in the agreed schedule.
- 7.7. Authorised Payment Certificates are to be invoiced separately on any invoice. Failure to comply or supply appropriate documentation will result in a delay to payment as set out within this clause.
- 7.8. WHH shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 7.9. The Supplier shall invoice WHH after acceptance of the Goods and/or Services as set out in clause 4.3.
- 7.10. Disputed invoices will be payable within the period stated in 7.11 from the date of the dispute is resolved. WHH will pay within the terms of 7.11 those parts of any invoice which is not in dispute.
- 7.11. WHH shall pay correctly rendered invoices within thirty (30) days of the end of the month (or such other period as agreed with WHH following receipt of the invoice and any required documentation subject to the Conditions of this clause. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.12. WHH may, without limiting any other rights or remedies it may have, set off any amount owed to WHH by the Supplier against any amounts payable by WHH to the Supplier or any parent or subsidiary or associated entity of the Supplier, whether under this Contract or otherwise.
- 7.13. All invoices shall specifically identify each line item set out in the appropriate Purchase Order and/or VO and/or Payment Certificate. Failure to comply will result in a delay of payment set out within this clause.
- 7.14. Retention. WHH shall retain a retention of 5% (five percent) of the value of the Contract price which shall be paid at 2.5% (two and a half percent) on Satisfactory Completion, the balance being paid 12 (twelve) months after Satisfactory Completion such other period.
- 7.15. To ensure no doubt any hourly rate charged shall exclude lunch breaks, travel to and from WHH place of business to which the Contract applies or time off site other than for business connected with the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Ownership of Background Intellectual Property shall remain unaffected by this Contract. Background IPR shall mean any Intellectual Property Rights which at the outset of this Contract or thereafter are developed by, or become owned by, or otherwise are or come into the possession of either party independently of its activities under this Contract or which are licensed to a party by a third party for the purposes of complying with its obligations under this Contract.

- 8.2. Ownership of any and all Foreground Intellectual Property shall vest exclusively in WHH. Foreground IPR shall mean any Intellectual Property Rights generated during the course of the Supplier's activities in the provision of the Goods and/or Services hereunder. From the moment of its creation, the Supplier hereby undertakes to do all acts and things necessary at its own cost to vest and perfect the vesting of Foreground Intellectual Property in WHH, as the case may be.
- 8.3. In respect of any Goods and/or Services that are Delivered to WHH under this Contract, the Supplier warrants that it has clear and unencumbered title to all such items, and that at the date of Delivery of such items to WHH, it will have full and unrestricted rights to transfer all such items to WHH.
- 8.4. The Supplier hereby assigns to WHH, with effect from the date hereof, and with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Goods and/or Services, including for the avoidance of doubt any deliverables.
- 8.5. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt any deliverables, of the Goods and/or Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.6. The Supplier shall, promptly at WHH's request, do (or procure to be done) all such further acts and things and shall execute all such other documents as WHH may from time to time reasonably require for the purpose of securing for WHH the full benefit of the Contract, including but not limited to all rights, title and interest in and to the Intellectual Property Rights assigned to WHH in accordance with clause 8.4.
- 8.7. The Supplier hereby grants to WHH, a royalty-free and (save as expressly provided herein) irrevocable, non-exclusive, perpetual licence ("the Supplier licence"), with the power to grant sub-licences to any persons providing services to WHH and/or its Clients, to use the Background IPR including the associated documentation supplied by the Supplier under this Contract solely for the purposes of using and operating the Goods and/or Services to the extent necessary to enable WHH (or such third party to whom this Contract or the rights and obligations hereunder may be assigned, novated or otherwise transferred in compliance with clause 15.1) and its Clients to enjoy full and unrestricted use and benefit of the Goods and/or Services.
- 8.8. Goods and/or Services subsequent to the occurrence of an event listed in 8.10 below, WHH may sub-licence use of the Supplier's Background IP to any third party solely for the purposes of enabling the third party to provide to WHH the same or similar Goods and/or Services as the Supplier provided under this Contract to WHH.
- 8.9. WHH may take the benefit of the right referred to in 8.9 above on the occurrence of any of the following events: a) a "release event" as defined in the NCC "Multi Licensee Escrow Agreement"; and b) should termination of this Contract occur earlier than its expiry date for any reason specified in clause 12.2 or clause 12.3, subject to the sub-licence being for a period not exceeding five (5) years or the Contract expiry date whichever is the later.
- 8.10. The Supplier where applicable and to the extent reasonably possible, shall procure at its cost the grant from such third parties as may be necessary to WHH of a perpetual, royalty free, non-exclusive, licence to use, access and modify such third party Software and related documentation and all Intellectual Property Rights therein for the purposes of WHH and its Clients using and enjoying the full benefit of the Goods and the Services and to operationally maintain and operate the Goods and the Services.

9. WHH MATERIALS

- 9.1. The Supplier acknowledges that all WHH Material supplied by WHH to the Supplier and all rights in WHH Material are and shall remain the exclusive property of WHH. The Supplier shall keep WHH Materials in safe custody at its own risk, maintain them in good condition, fair wear and tear excepted, until returned to WHH, return WHH Material to WHH promptly upon WHH's request and shall not dispose or use the same other than in accordance with WHH's written instructions or authorisation.
- 9.2. Any WHH Material supplied shall be used to its best advantage and not wasted. If in the opinion of WHH material has not been used to its full extent (for example but not limited to where new piece of material is used but a smaller piece was available and not used) WHH retains the right to charge the Supplier for such material or wasted material.
- 9.3. The licensing provisions of clause 3.7 of this Contract shall apply in respect of WHH Material.

10. INDEMNITY & INSURANCE

- 10.1. The Supplier shall indemnify and shall keep WHH indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by WHH as a result of or in connection with:
- (a) any claim made against WHH by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

- (b) any claim brought against WHH 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 Goods and/or Services to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against WHH by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods and/or Services, to the extent that the defect in the Goods and/or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

10.2. During the term of the Contract and (unless otherwise agreed in writing by WHH) for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract. Upon WHH's request the Supplier shall produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance failure to provide the requested documentation does not preclude the Supplier from its obligations hereunder.

10.3. WHH's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

11. CONFIDENTIAL INFORMATION

11.1. Each Party shall keep in strict confidence all technical or commercial know-how, Specifications, SOW's, inventions, processes or initiatives including all contracts between the Parties which are disclosed to a Party (known as the receiving Party) by the other Party (known as the disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing Party's business, its products or its services which the receiving Party may obtain. The receiving Party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11.2. Neither party may advertise or in any way publicise any details of this Contract or any dealings between the parties without the prior written agreement with the other party.

11.3. Where any Supplier has signed a separate confidentiality agreement with WHH for the scope of this Contract, the NDA shall take precedence over this clause.

This clause 11 shall survive the termination of this Contract for a period of no less than 10 (ten) years.

12. TERMINATION

12.1. WHH may at its sole discretion terminate the Contract in whole or in part at any time with immediate effect on instruction by an authorised person of WHH or such other period as determined by WHH whereupon the Supplier shall discontinue all work on the Goods and/or Services that were intended for the benefit of the Contract. WHH shall pay for reasonable demonstrable costs paid and committed but shall not be liable for compensation including, but not limited to costs, expenses loss of anticipated profits, loss of anticipated contracts or opportunity, or any indirect or consequential losses.

12.2. WHH may terminate the Contract in the event that the Supplier is in breach of any material obligation under the Contract and if the breach is capable of remedy, the Supplier has failed to remedy such breach immediately or within such other period as determined by WHH to the Supplier requiring remediation of the breach. In such event WHH shall not be liable for any compensation whatsoever to the Supplier or to any other person or entity including, but not limited to, costs, loss of anticipated profits or any consequential losses

12.3. WHH may at its sole discretion terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (a) the Supplier ceases or threatens to cease or suspend to carry on its business; or
- (b) the Supplier or its agents, suppliers, employees, sub-contractors commits any act of fraud or falsification of data or the persistent supply of materially inaccurate data for whatever reason or performs a prohibited act; or
- (c) any distress, execution or other process is levied or enforced upon the whole or any part of the assets or undertaking of the Supplier; or
- (d) the Supplier commences or enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company except as provided in clause 12.4 below) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver, administrator or liquidator is appointed in respect of the whole or any part of the Supplier's undertaking or assets; or

- (e) the financial position of the Supplier, including but not limited to its ability to pay its debts, deteriorates to such an extent that in the sole opinion of the WHH the capability of the Supplier to fulfil its obligations under the Contract has been placed in jeopardy.
- 12.4. Should the ownership or the majority ownership of the Supplier change, WHH reserves the right to terminate the Contract forthwith.
- 12.5. Termination of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Contract for any reason the Supplier shall immediately return all WHH's Material at the Supplier's expense. If the Supplier fails to do so, then WHH may enter the Supplier's premises and take possession of them or charge the Supplier the cost of WHH Material plus a twenty five percent (25%) handling charge. 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. Any licence granted by WHH under clause 3.7 shall automatically terminate.
- 13.2. On termination of the Contract for any reason WHH may, at its sole option:
- (a) require the Supplier to immediately refund all monies which may have been paid in or as an advance;
- (b) return to the Supplier all Goods previously supplied under the Purchase Order and the Supplier shall immediately refund to WHH all monies paid by WHH for the Goods.
- 13.3. The Supplier shall immediately Deliver to WHH all deliverables, whether or not then complete, for which WHH has paid and which are deemed acceptable by WHH as fit for the purpose for which it has contracted. The price (or any part thereof) paid for those Goods and/or Services not deemed as acceptable, shall immediately be refunded to WHH.
- 13.4. If any of the events described in clause 12.3 occurs, WHH may, at its sole discretion, consider the purchasing for fair and reasonable consideration any of the Goods and/or Services which may be available from the Supplier at the time of termination and the Supplier hereby grants WHH for good consideration, receipt of which is acknowledged, a right of first refusal in respect of any such purchases.
- 13.5. Where WHH accepts or purchases any Goods and/or Services, the Goods and/or Services shall be immediately Delivered to WHH as required under the terms of the Purchase Order. If the Supplier fails to do so, then WHH 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. The accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14. FORCE MAJEURE

- 14.1 Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, not as a result of any action or in-action by that Party, and which by its nature could not have been foreseen or could not have been avoided by proper planning by such Party, or whose effect is otherwise required to avoid or provide against (other than by way of insurance), if it could have been foreseen, was unavoidable, provided that the Supplier has and/or shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. A Force Majeure event may be, but not limited to, any of the following, war or civil war, civil unrest, any act of terrorism or a specific threat of terrorism, lightning, earthquake or extraordinary storm, fire or flooding.
- 14.2 If any events or circumstances prevent either Party from carrying out its obligations under the Contract for a continuous period of more than ninety (90) days or such other time as may be agreed by WHH, WHH may terminate this Contract immediately by giving written notice to the Supplier.

15. GENERAL

- 15.1. **Assignment and Sub-contracting.**
- (a) WHH may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under this Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without WHH's prior written consent.

15.2. **Notices.**

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office or its principal place of business or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or electronic mail. Notwithstanding the foregoing, termination notices and other formal notices, for example with respect to any breach or non-compliance with these Contract Conditions, shall not be sent by electronic mail unless at the same time notice is given in another manner permitted by this clause 15.2(a).
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or electronic mail, one (1) Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action which shall be delivered to the registered office of either Party.

15.3. **Disputes.** If any dispute arises out of or in connection with this Contract the Parties undertake that, prior to the commencement of any legal proceedings, they will seek to have the dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other. If the dispute has not been resolved to the satisfaction of either Party within sixty (60) calendar days of initiation of the procedure pursuant to this clause or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may deal with the dispute through legal proceedings.

15.4. **Severance.**

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

15.5. **WHH's Personnel.** The Supplier undertakes during the term of the Contract and for twelve (12) months after completion or earlier determination of the Contract not to solicit or make an offer of employment (or an offer for services) to any WHH director, employee, officer, or contractor whether self-employed or otherwise, engaged in performance of the work under this Contract.

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

15.7. **Third Party Rights.** A person who is not a party to the Contract shall not have any rights under or in connection with the Contract except as may be expressly set out in this Contract.

15.8. **Survival.** Any clauses which expressly or by implication have effect after termination shall continue in full force and effect thereafter.

15.9. **Entire Agreement.** This Contract and any attachments thereto constitutes the entire agreement between the Parties and there are no agreements or understandings between them other than those set out herein.

15.10. **No Partnership.** Nothing in this Contract is intended to or shall be deemed to neither constitute a partnership or joint venture of any kind nor constitute any Party being the agent of the other for any purpose. No Party shall have the authority to act as agent for, or to bind, the other Party in any way.

15.11. **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by WHH.

15.12. **Governing Law and Jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.