

CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES BY MABEY HIRE LIMITED

These terms and conditions apply to the purchase of goods and/or services by Mabey Hire Limited (**Mabey**) from the supplier named in Mabey's purchase order (the **Supplier**).

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

Affiliate: any entity that directly or indirectly Controls, is Controlled by, or is under common Control with the relevant entity.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 16.8.

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

Control: shall be defined as in **section 1124 of the Corporation Tax Act 2010**, and the expression **change of Control** shall be construed accordingly.

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

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

Goods Specification: the specification for the Goods, including any related plans and drawings, that is provided by Mabey or, where Mabey is purchasing standard Goods "off the shelf", the specification published by the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and [neighbouring and] related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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.

Order: Mabey's order for the supply of Goods and/or Services, as set out in Mabey's purchase order form or as otherwise agreed in writing.

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 relevant scope of works and/or service level agreement or as otherwise agreed in writing by Mabey and the Supplier.

1.2. Interpretation:

- (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 successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include** or any similar expression shall be construed as illustrative and shall not limit the sense of such words.

2. BASIS OF CONTRACT

2.1. The Order constitutes an offer by Mabey to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2. The Order shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Order; or any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (Commencement Date).

2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1. The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) 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 Mabey, expressly or by implication, and in this respect Mabey relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery or such other period as may be agreed between Mabey and the Supplier in writing; 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.

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, 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 Mabey 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 within 5 days of the date of the Order. Where a date is specified on an Order, time shall be of the essence for such Order;
- (b) to the location set out in the Order or as instructed by Mabey before delivery (**Delivery Location**); and
- (c) except where an Order is marked "urgent" (in which case delivery may be arranged outside normal business hours), during Mabey's normal hours of business on a usual working day, or as instructed by Mabey.

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 Mabey'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 Mabey to the remedies set out in Clause 7.1.

4.5. Title and risk in the Goods shall pass to Mabey on completion of delivery.

4.6. Mabey 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.

4.7. If following such inspection or testing Mabey considers that the Goods do not comply or are unlikely to comply with the Supplier's obligations under this Contract, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Mabey may conduct further inspections and tests after the Supplier has carried out its remedial actions.

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 Mabey and/or its Affiliates 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 Mabey 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 Mabey in all matters relating to the Services, and comply with all instructions of Mabey;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Mabey expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) 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 Mabey, will be free from defects in workmanship, installation and design;
- (g) observe all health and safety rules and regulations and any other security requirements that apply at any of Mabey's premises;
- (h) hold all materials, equipment and tools, drawings, specifications and data supplied by Mabey to the Supplier (**Mabey Materials**) in safe custody at its own risk, maintain the Mabey Materials in good condition until returned to Mabey, and not dispose or use the Mabey Materials other than in accordance with Mabey's written instructions or authorisation;
- (i) not do or omit to do anything which may cause Mabey to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Mabey may rely or act on the Services.

5.4. Mabey shall provide the Supplier with reasonable access at reasonable times to Mabey's premises for the purpose of providing the Services and such necessary information for the provision of the Services as the Supplier may reasonably request.

6. SUPPLIER COMPLIANCE WITH APPLICABLE LAWS

6.1. In performing its obligations under the Contract, the Supplier shall:

- (a) 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 this Contract in respect of the Goods, the Services and the Deliverables;
- (b) comply with all applicable laws, regulations, regulatory policies, guidelines or industry from time to time in force including the Modern Slavery Act 2015, the Data Protection Act 1998 and the Bribery Act 2010 (**Applicable Laws**);

- (c) not engage in any activity, practice or conduct that would constitute an offence under the Applicable Laws if such activity, practice or conduct were carried out in the UK;
- (d) comply with Mabey's Modern Slavery Policy and the Mabey Group Ethics and Business Conduct Policy (copies of which are been provided to the Supplier and further copies are available on request), together with any other policies provided to or made available to the Supplier from time to time.
- (e) require that each of its subcontractors and suppliers shall comply with the Applicable Laws relating to anti-bribery and anti-slavery and human trafficking.

6.2. The Supplier represents, warrants and undertakes that:

- (a) neither it nor any director, officer, agent, employee or Affiliate of the Supplier is aware of or has taken any action, directly or indirectly, that could result in a breach of the Applicable Laws; and
- (b) it conducts and has conducted its business in compliance with the Applicable Laws and has instituted and maintains policies and procedures designed to ensure continued compliance with the Applicable Laws.

6.3. The Supplier agrees to advise Mabey immediately and in writing should it or any Affiliate become aware of any breach of the Applicable Laws.

7. CUSTOMER REMEDIES

7.1. If the Supplier fails to deliver the Goods and/or perform the Services in accordance with the Contract, Mabey shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights whether or not it has accepted the Goods and/or Services:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the defective 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, to re-perform the Services or to provide a full refund of the price of the rejected Goods and/or Services (if paid).
- (d) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by Mabey in obtaining substitute goods and/or services from a third party;
- (f) 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
- (g) to claim damages for any additional costs, loss or expenses incurred by Mabey which are in any way attributable to the Supplier's failure to its obligations under this Contract.

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

7.3. Mabey's rights under the Contract are in addition to its 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) unless expressly stated on the Order, 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 Mabey.

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 Mabey in advance, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3. Unless otherwise specified in the Order, the Supplier shall invoice Mabey for Goods on or at any time after completion of delivery of the Goods and for Services on completion of the Services. Each invoice shall include such supporting information required by Mabey to verify the accuracy of the invoice, including the relevant purchase order number. Mabey shall not be liable to pay sums not invoiced within 6 months of the date on which the Supplier was first entitled to invoice such sums.

8.4. In consideration of the supply of Goods and/or Services by the Supplier, Mabey shall pay the undisputed and correctly invoiced amounts within 30 days of the end of the month in which the invoice was received to a bank account nominated in writing by the Supplier.

8.5. All amounts payable by Mabey under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Mabey, Mabey shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6. If Mabey fails to make a payment due to the Supplier under the Contract by the due date, then Mabey 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 8.6 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.

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 Mabey to inspect such records at all reasonable times on request.

8.8. Mabey may at any time, without notice to the Supplier, set off any liability of the Supplier to Mabey against any liability of Mabey to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by Mabey of its rights under this Clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

9.2. The Supplier grants to Mabey, or shall procure the direct grant to Mabey of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy, modify, use and share the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

9.3. All Customer Materials are the exclusive property of Mabey and Mabey grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and use any materials provided by Mabey to the Supplier for the term of the Contract strictly for the purpose of providing the Services to Mabey.

10. INDEMNITY

10.1. The Supplier acknowledges that Goods and/or Services may be resold, hired or provided to customers of Mabey and/or its Affiliates as part of its business. Accordingly, the Supplier shall indemnify Mabey and its Affiliates against all liabilities, costs, expenses, damages and losses (including 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 reasonable professional costs and expenses) suffered or incurred by Mabey and/or its Affiliates arising out of or in connection with any claim made against Mabey and/or its Affiliate by a third party (including customers and co-contractors of Mabey and/or its Affiliates):

- (a) 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 Mabey Materials);
- (b) 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) 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

During and for 3 years after the end of the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract.

12. CONFIDENTIALITY

12.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except that each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this Clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.3. The Supplier will not publicly announce that it provide services to Mabey nor use Mabey's name as endorsement of it or its services without Mabey's prior written consent.

13. TERMINATION

13.1. Without affecting any other right or remedy available to it, Mabey 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) the Supplier's financial position deteriorates to such an extent that in Mabey's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of Clause 6,
- (b) for convenience by giving the Supplier 30 days' written notice.

13.2. 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 30 days after being notified to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; 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.

14. CONSEQUENCES OF TERMINATION

14.1. On termination of the Contract, the Supplier shall immediately deliver to Mabey all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then Mabey 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.

14.2. 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.

14.3. 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.

15. GENERAL

15.1. Assignment and other dealings. The Supplier shall not assign, transfer, mortgage, charge, subcontract, 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 Mabey. Where Mabey gives consent to subcontract, the Supplier shall be fully liable for all acts and omissions of its subcontractor as if they were its own.

15.2. Notices. Any notice under or in connection with the Contract should be given in writing and delivered by hand or by pre-paid first-class post or other next working day delivery service to the other party's registered office. Notices will be deemed to have been received, if delivered by hand, on the day of delivery, and, if sent by post, on the second usual working day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action.

15.3. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deleted and the remainder of this Contract will remain in full force and effect.

15.4. Waiver. Any 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.

15.5. 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.

15.6. Entire agreement. The Contract 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.

15.7. Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.8. Variation. Except as set out in these Conditions, no variation of the Contract, 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.

15.9. Governing law and jurisdiction. 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 law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.