

Environmental Chemistry Testing Limited

Standard Purchase Terms and Conditions

1. Definitions and interpretation

- 1.1 The definitions and rules of interpretation in this Clause 1 apply to the Agreement.
- "Agreement" means the Order together with: (a) these Standard Terms and Conditions of Purchase; (b) the Special Conditions; (c) the Specification and (d) any other relevant documents which are expressly referenced on the Order (or, in the absence of such express reference, are deemed to be referenced on the Order).
- "Background IPR" means any Intellectual Property Rights owned, created or acquired by or licensed to a Party prior to the date of the Agreement and/or outside of the Supplies.
- "Phenna Group" means Environmental Chemistry Testing Limited and any other of its wholly owned subsidiaries from time to time within the meaning of Section 1159 of the Companies Act 2006.
- "Business Day" means a day (other than a Saturday or Sunday or a day on which the Buyer's relevant site or office is closed due to a holiday) on which banks are open for business generally in London.
- "Buyer" means the company identified on the Order having a place of business at the address for correspondence shown on the Order.
- "Buyer Information" means any and all data, information or material provided directly or indirectly by the Buyer to the Supplier under the Agreement and which is: (a) Background IPR; (b) Confidential Information; (c) Foreground IPR; and/or (d) Personal Data.
- "Confidential Information" means any and all confidential information, including without limitation any and all technical, financial, commercial or other information (howsoever recorded, preserved or disclosed) disclosed directly or indirectly by the Disclosing Party to the Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) in a prominent position or described as being confidential at the time of disclosure or which would reasonably be considered to be confidential having regard to all the circumstances of the disclosure; any information obtained by examination, testing or analysis in any way from such confidential information; and any derivative of any such confidential information provided that Confidential Information shall not include any information which the Receiving Party can show through documentary evidence: (a) is or becomes publicly available otherwise than as a result of a breach of the Order or the fault of the Receiving Party; (b) has been lawfully received from a third party without restriction as to its use or disclosure; (c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party; (d) was independently developed by or for the Receiving Party without making use of any Confidential Information; or (e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party, and, for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available, and, for the purposes of Clause 12, references to "Confidential Information" shall be deemed to include Background IPR, Foreground IPR and Personal Data.
- "Deliverable" means an identifiable and measurable output in connection with the Services.
- "Delivery Address" means the address stated on the Order.
- "Disclosing Party" means a Party which discloses any Confidential Information to the Receiving Party.
- "Event of Default" means an event specified as such in Clause 9.1.
- "Force Majeure Event" means an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise or reasonable diligence and foresight the Party affected was or is unable to prevent provided that the event or circumstance is limited to the following: (a) riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), acts of terrorism, civil war, rebellion, requisition or compulsory acquisition by any governmental or competent authority; (b) ionising radiation or contamination or other hazardous properties of any explosive assembly or nuclear component; (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (d) earthquakes, flood or other physical natural disaster; (e) strikes or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected Party, its subcontractors or its suppliers and which affect an essential portion of the Supplies but excluding any strike or industrial dispute which is specific to the performance of this Agreement; and (f) restrictions instigated by government or competent authority directly relating to an epidemic or pandemic.
- "Foreground IPR" means any Intellectual Property Rights in the Supplies and/or as may be otherwise created as a result of the work undertaken by the Supplier or its sub-contractors or suppliers under the Agreement.
- "Good Industry Practice" means the exercise of that degree of competence and/or practices and standards which would reasonably be expected from a skilled and experienced supplier engaged in the same or similar type of business as the Supplier under similar circumstances, including, without limitation, having similar financial resources.
- "Goods" means any goods, including, without limitation, materials, technical data, technology, software, source code, hardware, system design, documentation, prototypes and test results which are to be provided by the Supplier to the Buyer pursuant to the Agreement and means any or all of them as the context may require.
- "Group" means a holding company and any of its subsidiaries from time to time, each within the meaning of Section 1159 of the Companies Act 2006.
- "Indemnified Party" means the Buyer and any member of Phenna Group.
- "Intellectual Property Rights" means: (a) patents, inventions, designs, copyright and related rights, database rights, know-how, trade secrets, trade marks and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration; (b) proprietary rights in domain names; (c) applications, extensions and renewals in relation to any of these rights; and (d) all other rights of a similar nature or having an equivalent effect anywhere in the world.
- "Order" means the purchase order placed by the Buyer on the Supplier in respect of the Supplies.
- "Party" means each of the Buyer and the Supplier and includes their successors in title, permitted assignees and permitted transferees.
- "Personal Data" has the meaning given to it in the General Data Protection Regulation (GDPR).
- "Price" means the amount payable by the Buyer to the Supplier in respect of the Supplies.
- "Process", "Processing" and "Processed" each has the meaning given to it in the General Data Protection Regulation (GDPR).
- "Receiving Party" means a Party which receives any Confidential Information from the Disclosing Party.
- "Services" mean any services, including, without limitation, work, technical assistance and/or training which are to be performed by the Supplier and any Deliverable which is to be delivered by the Supplier pursuant to the Agreement and means any or all of them, as the context may require.
- "Special Conditions" mean the conditions which are expressly set out or referenced on the Order (whether marked as Special Conditions or not).
- "Specification" means the document (if any) which sets out the agreed design, performance, functionality of and procedures for the Supplies and which is expressly referenced on the Order (or which, in the absence of such express reference, is deemed to be referenced on the Order), including any plans, drawings, data or other information relating to the Supplies.
- "Supplier" means the supplier on which the Order is placed and, where applicable, (a) references to "Supplier" shall be deemed to include the relevant member of the Supplier's Group or any sub-contractor or sub-supplier, and (b) the Supplier shall be responsible for procuring the compliance of the relevant member of the Supplier's Group or any sub-contractor or sub-supplier with any relevant provisions in the Agreement.
- "Supplies" mean any Goods and/or Services and means any or all of them as the context may require.
- "VAT" means valued added tax as provided for in the UK Value Added Tax Act 1994.

1.2 Clause headings are for convenience only and shall not affect the interpretation of the Agreement.

1.3 Words in the singular shall include the plural and vice versa.

1.4 Any reference to a statute, statutory provision or other legislation shall be construed as a reference to that statute, statutory provision or legislation as amended, re-enacted or extended at the relevant time.

2. Contract formation

2.1 The Order constitutes an offer by the Buyer to purchase the Supplies provided that, if the Order is not accepted in accordance with the provisions of clause 2.2 within 30 (thirty) days of the date of the Order, the Buyer's offer will lapse without the Buyer incurring any liability to the Supplier.

2.2 The Supplier shall accept the Order by signing and returning the order acknowledgement or by sending a written confirmation to the Buyer. Alternatively, if the Supplier fails to do this, the Supplier shall be deemed to have accepted the Order as soon as it commences provision of the Supplies. On the Supplier's acceptance of the Order in accordance with this clause 2.2 the Agreement will be formed.

2.3 It is expressly agreed that any other terms and conditions contained in any acknowledgements, confirmations, standard forms, quotations, letter of offer, technical proposal or other similar documents issued by the Supplier to the Buyer in respect of the Supplies, or implied by trade custom, practice or course of dealing, shall not apply.

2.4 No variation to the Order or this Agreement shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Supplier.

2.5 In the event of any conflict between the documents comprising the Agreement, the following order of precedence shall apply:

2.5.1 the Special Conditions;

2.5.2 these Standard Terms and Conditions of Purchase;

2.5.3 the Specification; and then

2.5.4 any other relevant documents which are expressly referenced on the Order (or, in the absence of such express reference, are deemed to be referenced on the Order).

3. Supplier's responsibilities

3.1 The Supplier shall provide the Supplies to the Buyer in accordance with the Agreement and the Supplier shall allocate sufficient resources to enable it to comply with its obligations under the Agreement.

3.2 Any Specification supplied by the Buyer to the Supplier, or specifically produced by the Supplier for the Buyer in connection with the Agreement, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer and the Supplier assigns, with full title guarantee to the Buyer, all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is, or becomes, public knowledge through no fault of the Supplier, or as required for the purpose of the Agreement.

- 3.3 The Supplier shall at all times obtain and maintain all necessary licences and consents and comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services (including, but not limited to, the Health and Safety at Work, etc. Act, the Environmental Protection Act 1990 or amended, replacement and related legislation and regulations). Any unsafe circumstances arising out of the performance of the Services shall be reported immediately to the Buyer. The Supplier shall make the Buyer aware of any specific health and safety or environmental issues relating to the Supplies, together with written instructions in respect of any particular requires of the Supplies including, without limitation, in respect of handling, storage, maintenance and disposal.
- 3.4 The Supplier shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and the Supplier shall provide the Buyer with all facilities reasonably required for inspection and testing. If as a result of inspection and testing the Buyer is not satisfied that the Goods will comply in all respects with the Agreement and the Buyer so informs the Supplier within 14 (fourteen) days of the completion of inspection and testing, the Supplier shall take such steps as are necessary to ensure compliance.
- 3.5 Any Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and shall be properly packed and secured so as to reach their destination in an undamaged condition.
- 3.6 Other than limited business contact information in respect of the Buyer's employees and sub-contractors, which may be used by the Supplier solely for contract management activities in accordance with all applicable laws and regulations, the Supplier shall not Process any Personal Data in relation to the Agreement and shall not appoint any sub-processors unless and until the Buyer has authorised such Processing by way of a Special Condition which shall, amongst other things, set out the precise nature of the information to be Processed, the scope of prior to kt Processing and the additional terms and conditions that will apply to any such Processing. If the Supplier provides the Buyer with any Personal Data of its employees and sub-contractors in connection with the Agreement (including, without limitation, the identities of the relevant individuals, their contact information, and their role and their responsibilities), the Supplier acknowledges and agrees that it shall advise such individuals of the provision of such Personal Data prior to it taking place.
- 3.7 Subject to the provisions of Clauses 9 and 17 the Supplier shall immediately notify the Buyer of the occurrence of any event or conditions that might delay or prevent completion of any of its obligations under the Agreement, the reason for it and the measures being taken by it to rectify the situation.
- 3.8 Any drawings, information or documentation to be provided by the Supplier to the Buyer shall be in one hard copy or one machine-readable copy in reproducible format unless otherwise agreed. The Buyer may make copies of the same at no charge.
- 3.9 If the Supplier sells, provides or utilises any materials in an electronic form or format (including emails and computer programs) for or in connection with the provision of Supplies, the Supplier shall use its best endeavours to ensure that such materials shall be free from viruses, bugs or other unauthorised, malicious or malignant code, program or software protocol which disables, disrupts, restricts, slows down, impedes or otherwise obstructs the proper performance and operation of a computer system or any application run on such system.
- 3.10 To the extent that the Construction Industry Scheme (CIS) rules apply to any Supplies:
- 3.10.1 The Supplier shall assess the provision of any Supplies for compliance with the CIS rules and shall notify the Buyer prior to providing the Supplies if the Supplies fall within the CIS rules.
- 3.10.2 The Supplier shall ensure that it discloses the information required for the Buyer to file returns with HM Revenue & Customs under the CIS rules. In particular, the Supplier shall ensure that all costs are identified and categorised correctly (with documentary evidence of those costs provided to the Buyer) to enable the Buyer to file the necessary returns with HM Revenue & Customs Where a deduction is required under the CIS rules, the Buyer shall deduct the appropriate amount from the Supplier's invoice prior to payment to the Supplier.
- 4. Supplies**
- 4.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours (or otherwise as specified in the Order). The time of delivery of the Goods and of performance of the Services is of the essence of the Agreement. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Agreement will be treated as a single contract and not severable.
- 4.2 On delivery of each consignment of the Goods, the Supplier shall deliver to the Buyer such documents as are required by the Agreement, including without limitation, a prominently displayed packing note quoting the Order reference, customs export documents, advice notes and certificates of conformity.
- 4.3 Where acceptance tests are set out in the Agreement, acceptance of Goods delivered, and Services performed shall be subject to completion of the acceptance tests to the satisfaction of the Buyer. Where no acceptance tests are set out in the Agreement, the Buyer shall have the right to inspect the Supplies after delivery and/or performance and acceptance shall take place on inspection if the Buyer is satisfied that the Supplies are in accordance with the Agreement or, if no inspection is made, the Supplies shall be accepted on the later of: (i) when they have been taken into final and beneficial use by the Buyer or the Buyer's client; (ii) 20 (twenty) Business Days after delivery and/or performance in accordance with this Clause 4; or (iii) any other provisions relating to warranties and defects periods in this Agreement.
- 4.4 The Supplier shall, in good time, provide the Buyer with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services. T&M reports shall be submitted monthly by email.
- 5. Price and payment**
- 5.1 The Price for the Supplies shall be as stated in the Order and, unless otherwise so stated, shall be: (i) exclusive of any applicable valued added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and (ii) inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery to the Delivery Address, duties, levies and taxes (other than value added tax).
- 5.2 No increase in the Price shall be made (whether on account of increased material charges, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written agreement of the Buyer.
- 5.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms of sale.
- 5.4 The Supplier may submit to the Buyer on or after delivery of the Goods or complete and proper performance of the Services, as the case may be, an invoice, which must: (i) be clearly addressed to the correct legal entity of the Buyer; (ii) be sent to (separately from any Supplies) c/o Accounts Payable Department as specified on the Order; (iii) reference the Order number with respect to the Supplies and the number and date of any relevant delivery advice note; and (iv) set out each relevant line item of the Supplies delivered.
- 5.5 Unless otherwise stated in the Order, each correctly submitted and, where applicable, valid VAT invoice shall become due for payment on the last day of the month following the date of receipt of the invoice and the final date for payment shall be 30 (thirty) days after the due date provided that the Supplies in question have been delivered/performed in accordance with this Agreement and accepted by the Buyer.
- 5.6 The Supplier acknowledges and agrees that invoices shall only be passed for payment by the Buyer if they comply with the provisions of this Clause 5. Should any invoice contain incomplete or incorrect information or invalid charge, the Buyer will be entitled to reject such invoice and return it to the Supplier or ask the Supplier to rectify and resubmit it (any such rectified and resubmitted invoice shall be paid in accordance with Clause 5.5) or request the Supplier to issue a credit note to correct the error.
- 5.7 Where the Buyer is required to deduct withholding tax from its payment to the Supplier the Buyer will deduct the sum required by law and pay this to the tax authority.
- 5.8 Without prejudice to any other right or remedy the Buyer may have, the Buyer shall be entitled to set off against any payment owed by the Buyer to the Supplier under the Order any present or future sums that the Buyer, acting reasonably, considers are or will be due to the Buyer from the Supplier.
- 5.9 The Supplier shall be entitled to charge interest, at the rate of 2% (two per cent) per annum above the Bank of England's Base Rate from time to time, on any valid overdue payment; such interest accruing from the first day on which such payment is overdue until such payment has been made by the Buyer; and the Supplier acknowledges and agrees that such interest is the sole remedy available to the Supplier in the event of late payment.
- 6. Amendment to Supplies**
- 6.1 If the Buyer requests an amendment to the scope or execution of the Supplies, the Supplier shall within 5 (five) Business Days of the date of the Buyer's request (or such other time as may be agreed between the Parties) provide a written estimate to the Buyer of: (i) the time required to implement the amendment; (ii) any reasonable variation to the Price; and (iii) any other impact of the amendment on the terms of the Agreement.
- 6.2 If the Buyer wishes to proceed with the amendment, the Parties shall amend the Agreement in accordance with Clause 16. Save for Clause 6.3 below, no amendment to the Agreement shall be valid otherwise.
- 6.3 The Buyer may nevertheless instruct the Supplier in writing to carry out an amendment if, in the Buyer's absolute judgement, the time to evaluate and respond to one or more amendment requests under Clause 6.1 may result in a delay or affect the costs of any relevant project and the Parties will subsequently agree any reasonable impacts on the terms of the Agreement, failing which the Buyer will assess any fair and reasonable impacts.
- 7. Risk and title**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Agreement.
- 7.2 Title to the Goods shall pass to the Buyer on delivery or upon payment for the Goods by the Buyer, whichever is earlier.
- 8. Warranties and liability**
- 8.1 The Supplier warrants to the Buyer that the Goods shall be: (i) in accordance with the terms of this Agreement; (ii) of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier or implied under the Agreement; (iii) free from defects (whether actual or latent) in design, material and workmanship; (iv) correspond with any relevant Specification or sample; and (v) comply with all applicable statutory requirements and regulations as well as all of the Buyer's site (or, if applicable, the Buyer's customer's site), policies and rules.
- 8.2 The Supplier warrants to the Buyer that the Services shall be: (i) in accordance with the terms of this Agreement; (ii) performed by appropriately qualified and trained personnel, with due care, attention and diligence, in accordance with Good Industry Practice and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances; and (iii) performed in compliance with all applicable statutory requirements and regulations as well as all of the Buyer's site (or, if applicable, the Buyer's customer's site) policies and rules.
- 8.3 Not used.
- 8.4 Without prejudice to any other right available to the Buyer by contract or generally by law, if there is a breach of the warranties in Clauses 8.1 and 8.2, then the Supplier shall be entitled:
- 8.4.1 to require the Supplier to repair the Goods or to supply replacement Goods and/or Services in accordance with the Agreement within 5 (five) Business Days; or
- 8.4.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Supplier to repair the Goods or to supply any replacement Goods and/or Services, to treat the Agreement as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- 8.5 The Supplier shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 8.5.1 breach of any warranty given by the Supplier in relation to the Supplies;
- 8.5.2 any claim that the Supplies infringe, or their importation, use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.5.3 any liability under the Consumer Protection Act 1987 in respect of the Goods; and
- 8.5.4 any act or omission of the Supplier or its employees, agents or sub-contractors in the supply, delivery, installation and performance of the Supplies.

- 8.6 The Supplier agrees that all warranties attached to the Supplies shall be capable of being assigned to the Buyer's customer or other user by the Buyer without prior written notice to the Supplier.
- 9. Termination**
- 9.1 Each of the following is an Event of Default:
- 9.1.1 the Supplier fails to comply with any of its obligations under the Agreement and, if that default is capable of remedy, the Supplier fails to remedy that default within five (5) Business Days (or such other period agreed between the Parties) of the Buyer giving written notice to it requiring remedy; or
 - 9.1.2 the Supplier is unable to pay its debts generally as they fall due; or
 - 9.1.3 the Supplier makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Supplier (within the meaning of the Insolvency Act 1986); or
 - 9.1.4 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
 - 9.1.5 the Supplier ceases, or threatens to cease, to carry on business; or
 - 9.1.6 the Supplier is or may be unable, in the Buyer's reasonable opinion, to perform its obligations under the Agreement; or
 - 9.1.7 the Supplier is in breach of its obligations under Clauses 10, 11, 12, 13, 14 and 15.
- 9.2 The Supplier shall immediately notify the Buyer of the occurrence of an Event of Default. Whether the Supplier notifies the Buyer or not, on, or at any time after, the occurrence of an Event of Default, the Buyer shall be entitled (without prejudice to any other right or remedy available to it) on giving written notice to the Supplier to exercise any one or more of the following rights or remedies:
- 9.2.1 to require the Supplier to rectify the Event of Default;
 - 9.2.2 to reduce, reschedule or cancel any of the Supplies or to refuse to accept the provision of any further Supplies, in each case without having any liability to the Supplier;
 - 9.2.3 to recover any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever suffered or incurred by the Buyer arising out of or in connection with such Event of Default; and/or
 - 9.2.4 to terminate the Agreement in whole or in part.
- 9.3 The Buyer may at any time terminate the Agreement in whole or part upon giving the Supplier 30 days' written notice, in which event the Buyer agrees that it will reimburse the Supplier for any costs which the Supplier can prove it has reasonably and properly incurred as a direct consequence of such early termination which shall represent full and final settlement of such early termination.
- 9.4 Upon termination, howsoever arising, the Supplier shall return all of the Buyer's information, equipment and data forthwith to the Buyer and shall, if requested, provide the Buyer with all documentation and information as may be necessary to enable either the Buyer or a third party to complete the Supplies ordered.
- 9.5 Termination of the Agreement shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision which implicitly survives termination and the terms and conditions of the Agreement do not override any of the Buyer's statutory and common law rights (and are in addition to those rights and not in substitution for them).
- 10. Anti-bribery and modern slavery**
- 10.1 The Supplier shall:
- 10.1.1 comply with all legislation, regulations and sanctions relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;
 - 10.1.2 not engage in any activity, practice or conduct which would constitute an offence under such legislation;
 - 10.1.3 have and maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with all legislation, and will enforce them where appropriate;
 - 10.1.4 ensure that all persons associated with it or other persons who are performing its obligations in connection with the Agreement comply with this clause; and
 - 10.1.5 immediately inform the Buyer of any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with its obligations under the Agreement.
- 10.2 The Supplier represents and warrants that neither the Supplier nor any of its officers or employees: (i) has been convicted of any offence involving slavery and human trafficking; and (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 10.3 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains and use its best endeavours to ensure that there is no slavery or human trafficking in its supply chains.
- 11. Intellectual Property Rights**
- 11.1 Any Foreground IPR shall vest in and be the absolute property of the Buyer or its nominee. The Supplier assigns with full title guarantee and free from all third party rights any and all Foreground IPR to the Buyer or its nominee and the Supplier shall (at its own cost) do all necessary acts to vest the Foreground IPR in the Buyer or its nominee, including without limitation, executing or procuring the execution of documents. The Supplier may only use Foreground IPR as may be necessary for the purposes of performing any of its obligations under the Agreement.
- 11.2 The Background IPR of a Party shall remain vested in that Party or its licensor. Each Party grants to the other Party a non-exclusive and royalty-free license to use such of its Background IPR that may be provided by that Party to the other Party to the extent necessary for the purposes of performing its obligations under the Agreement only. A Party shall not grant any sub-licenses of any of the Background IPR of the other Party unless expressly permitted in the Agreement, except that the Buyer may grant sub-licenses of the Supplier's Background IPR to members of the Phenna Group.
- 11.3 If any of the Supplier's Background IPR is included in or is necessary for the use of any Supplies it must be clearly and legibly marked and/or identified by the Supplier and the Supplier grants to the Buyer an irrevocable, perpetual, non-exclusive and royalty-free license (with the right to grant sub-licenses) to use the Supplier's Background IPR as may be necessary to use the relevant Supplies and/or Foreground IPR.
- 11.4 The Supplier represents and warrants to the Buyer that the Supplies and any Foreground IPR and anything done by and any use by the Buyer in relation to the Supplies and any Foreground IPR will not infringe any Intellectual Property Rights of a third party. The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses, damages, payments and royalties of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any claim or allegation that the Intellectual Property Rights owned or controlled by a third party are infringed by the use of the Supplies and/or Foreground IPR.
- 11.5 Nothing in the Agreement shall give or be deemed to give either Party during or after the term of the Agreement any right, title or interest in any of the other Party's trade marks, service marks or trade names.
- 12. Confidentiality & information security**
- 12.1 The Receiving Party undertakes:
- 12.1.1 only to use, or allow to be used, any Confidential Information as may be necessary for performing any of its obligations under the Agreement and, in the case of any Background IPR or Foreground IPR, to use, or allow to be used, such Background IPR or Foreground IPR in accordance with the relevant license granted under clause 11 and not to use any Confidential Information, or allow it to be used, for any purpose except with the prior written consent of the Disclosing Party;
 - 12.1.2 to keep any Confidential Information confidential and not copy or disclose it to any person or party except as permitted under the Agreement, except that the Receiving Party may disclose Confidential Information where required by law, court order or any government or regulatory body provided that the Receiving Party will, where possible without breaching any legal or regulatory requirements, give the Disclosing Party advance notice of the disclosure requirement and will cooperate with the Disclosing Party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure to the extent reasonably practicable;
 - 12.1.3 only to disclose any Confidential Information to its directors, persons employed in or by its business, its professional advisors and/or, where the Receiving Party is the Buyer, any member of the Phenna Group, in each case, which need to know such Confidential Information for the purpose of the Agreement provided that the Receiving Party shall make each such person or party agree to observe terms no less stringent than those contained in this Clause 12 prior to any Confidential Information being disclosed to that person or party and the Receiving Party shall be responsible for such person or party's compliance;
 - 12.1.4 not to disclose any Confidential Information to any third party (other than as permitted under the Agreement) except as required for the purpose of the Agreement and with the prior written consent of the Disclosing Party provided that the Receiving Party procures such third party's written undertaking to the Disclosing Party to observe terms no less stringent than those contained in this Clause 12, prior to any Confidential Information being disclosed to that third party;
 - 12.1.5 not to copy, reproduce or reduce to writing any Confidential Information, or any part thereof, or allow any person or party receiving such Confidential Information from the Receiving Party to do so, except as is reasonably necessary for the purpose of the Agreement;
 - 12.1.6 to establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised use, reproduction, disclosure or access (and where the Receiving Party is the Supplier, in accordance with the provisions of Clause 12.3 below; and
 - 12.1.7 to notify the Disclosing Party as soon as reasonably practicable if it becomes aware of, or reasonably suspects, any loss or actual compromise of any Confidential Information by a third party other than in accordance with the terms of this Clause 12.
- 12.2 On expiry or termination of the Agreement:
- 12.2.1 the Receiving Party shall on written demand by the Disclosing Party: (i) return to the Disclosing Party any Confidential Information (and any copies thereof) disclosed by the Disclosing Party under the Agreement; (ii) use its reasonable endeavours to delete all electronic copies of Confidential Information; and (iii) provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this Clause 12.2.1 have been complied with;
 - 12.2.2 if the Disclosing Party has not made a demand under Clause 12.2.1 within 3 (three) calendar months of expiry or termination, the Receiving Party may destroy or erase such Confidential Information (and any copies thereof) in accordance with its usual business practices; and
 - 12.2.3 the Receiving Party shall make no further use of the Confidential Information, except that the Receiving Party may retain 1 (one) copy of any Confidential Information solely for the purpose of enabling it to comply with the provisions of the Agreement or for legal or regulatory purposes.
- 12.3 The Supplier shall at all times implement and maintain appropriate levels of security to protect any and all Buyer Information which as a minimum are in accordance with Good Industry Practice and comply with all applicable laws and regulations.
- 12.4 The Supplier shall not, and shall not permit any person to, without the Buyer's prior written consent, publicise in any media or public announcement information regarding the terms of the Agreement or the Supplies provided or use the Buyer's (or Buyer's customer's) company name or symbol or emblem as part of any publicly available material.
- 13. Personnel**
- 13.1 The Supplier shall provide its employees with all necessary personal protective equipment (PPE) and ensure that its employees and any subcontractor's personnel use such PPE.
- 13.2 The Supplier shall ensure that its employees, and any subcontractor's personnel, have appropriate qualifications, training and expertise necessary to provide the Supplies.
- 13.3 The Supplier shall at all times be responsible for its employees, agents and subcontractors and shall ensure that they, when within the boundaries of the Buyer's site (or the Buyer's customer's site):
- 13.3.1 are made aware of and comply with the rules and requirements of that site; and
 - 13.3.2 shall not, without the Buyer's prior written consent, use any of the Buyer's (or the Buyer's customer's) site equipment or services;

13.4 At the Buyer's request, the Supplier shall, within 30 days of the request, remove any of its employees and subcontractors where the Buyer considers that it is not in the interests of the Buyer for them to be engaged in the provision of the Supplies and the Supplier shall replace the same with another person having appropriate qualifications, training and expertise at no additional cost to the Buyer. The Buyer shall have the right to refuse access to its site to any of the Supplier's employees and subcontractors who in the opinion of the Buyer is not a fit and proper person to have access to the site.

14. Assignment and subcontracting

14.1 Subject to the provisions of Clause 8.6, the Supplier shall not, without the prior written consent of the Buyer, assign, transfer or subcontract all or any of its rights and/or obligations under the Agreement.

14.2 Notwithstanding any such assignment, transfer or subcontracting, the Supplier shall remain wholly liable to the Buyer for all obligations under the Agreement.

15. Insurance

15.1 The Supplier shall, as a minimum, maintain the following primary insurance policies at the specified amount (unless the Buyer has specified some other sum in the Special Conditions), with reputable insurers authorised to conduct business in the United Kingdom, against all risks, including without limitation, protection for claims for third party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Buyer as a result of the provision to it of the Supplies:

15.1.1 a policy of Public Liability Insurance for an amount not less than £2,000,000 (two million pounds) per event or series of events in respect of loss of or damage to property of the Buyer, Buyer's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;

15.1.2 a policy of Product Liability Insurance for an amount not less than £2,000,000 (two million pounds) per event or series of events in respect of loss of or damage to property of the Buyer, Buyer's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;

15.1.3 a policy of Professional Indemnity Insurance for an amount not less than £2,000,000 (two million pounds) per event or series of events;

15.1.4 not used;

15.1.5 where applicable, a policy of Contractor's All Risk Insurance for an amount not less than a sum equivalent to 125% (one hundred and twenty-five per cent) of the total of all payments due to the Supplier pursuant to the Order. Such insurance shall be in the joint names of the Supplier and all interested parties (including the Buyer) and shall cover all of the Supplier's subcontractors. In addition, the Supplier shall take out and maintain, either as an extension to such insurance or as a separate joint names policy, insurance against loss or damage to project works and associated site materials caused by or resulting from terrorism; and

15.1.6 any other insurance which the Supplier may be statutorily required to maintain, such as Employer's Liability Insurance.

15.2 The Supplier shall procure that such insurance is arranged on a continuing basis and shall make the Buyer aware of any conditions, limitations, exclusions and restrictions within such insurance policies.

15.3 The Buyer shall have the full benefit of such policies detailed in this Clause 15 and, where applicable, the Agreement shall invoke and "indemnity to principals" clauses within the Supplier's liability insurance policies.

15.4 The Buyer shall have no liability for damages or loss to any property of the Supplier or personal property of the Supplier's employees or subcontractors except to the extent that it is caused by the Buyer's negligence.

16. Amendments to Agreement

16.1 If the Parties wish to amend the Agreement the Parties shall sign a written amendment to the Agreement provided that, if the Supplier fails to sign such written amendment, it shall be deemed to have accepted it by the delivery of Goods and/or performance of Services relating to the amendment.

17. Force majeure

17.1 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of its obligations under the Agreement, if the delay or failure is results from a Force Majeure Event, provided that the affected Party:

17.1.1 promptly notifies the other Party, in writing, and promptly provides reasonable evidence, of: (i) the occurrence of such Force Majeure Event; (ii) the expected duration of such Force Majeure Event; and (iii) the effect of such Force Majeure Event on the affected Party's ability to perform its obligations under the Agreement;

17.1.2 uses all reasonable endeavours to mitigate the delay in performing or failure to perform its obligations under the Agreement and continues to fulfil its obligations to the extent that they are not affected by the Force Majeure Event, and continues to promptly notify the other Party of any change in the extent and effect of the Force Majeure Event; and

17.1.3 recommences its full performance as soon as is reasonably possible.

17.2 If a Force Majeure Event has the effect of preventing or delaying the performance of the Supplier's obligations for a continuous period of 30 (thirty) days or more, or for an aggregate period of 30 (thirty) days within a continuous period of 60 (sixty) days, then the Buyer may, by written notice to the Supplier, terminate the Agreement immediately without having any liability to the Supplier except in respect of that part of the Supplies already performed and accepted by the Buyer prior to such termination.

18. Governing law and disputes

18.1 This Agreement shall be governed by the law of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts.

18.2 Subject to Clause 18.3 below, should a dispute arise under or in connection with the Agreement the Parties shall initially attempt in good faith to settle the dispute by negotiation. Should any attempt at negotiation not result in resolution of the dispute within 30 (thirty) days of notification of the dispute (or such other period as the Parties may agree), either Party may initiate mediation proceedings by application to the Centre for Effective Dispute Resolution (CEDR).

18.3 In the event that any dispute is not resolved amicably by mediation within 30 (thirty) days of application to CEDR (or such other period as the Parties may agree), or in the case of a dispute over purely legal issues, or where disposition of the legal issued would dispose of all other issues in dispute, the matter shall be brought before the English courts in the quickest manner possible and the Parties agree to co-operate in the expeditious conduct of such legal proceedings, and the Parties submit to the exclusive jurisdiction of the English courts.

19. General

19.1 Any notice under or in respect of the Agreement sent by one Party to the other shall be in writing and shall be sent by first class post using special or recorded delivery to its address set out in the Agreement or to such other address as may be from time to time be notified by the one to the other and shall be deemed to have been delivered 2 (two) Business Days after posting it from and to an address in the United Kingdom. Unless otherwise agreed, all notices and correspondence under or in respect of the Agreement shall be in the English language.

19.2 No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that right or remedy, nor shall it preclude or restrict the 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 right or remedy.

19.3 If any of the provisions of the Agreement are found to be valid, illegal or unenforceable this shall not affect the validity of the remaining provisions. In the event of such occurrence, the Parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or similar purpose.

19.4 Except for any Indemnified Party, a third party which is not a Party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

19.5 The Agreement is the only and entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes any prior discussions, oral or written agreement with respect to the subject matter of the Agreement. Each of the Parties acknowledges that, in entering into the Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, provided always that nothing in this clause limits or excludes any liability for fraud.

