HORNBECK

HORNBECK LTD - GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Agreement

This Agreement shall apply when Hornbeck Ltd, company registration number 07617882, registered office 32, Henry Road, Barnet, Herts EN4 8BD procures any goods and/or services. These terms and conditions will apply to the exclusions 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. DEFINITIONS AND INTERPRETATION

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

Confidential Information: any and all information and data of a confidential or proprietary nature in whatever form and on whatever media (whether written, oral, visual, electronic, magnetic or other media) which includes: commercial, financial, business, customer, supplier, marketing, third party, technical or other information (including, inventions, ideas, designs, formulae, strategies, software, know-how and trade secrets); the fact that discussions are taking place concerning this Agreement; any information that is identified as being of a confidential or proprietary nature; any information which at the time of disclosure is or should be regarded as confidential or proprietary having regard to the nature of the information and the circumstances of the disclosure; and any information, findings, data or analysis derived from the afore-mentioned.

Control: as defined in section 1124 of the Corporation Tax Act 2010.

Data Protection Legislation: the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as further amended or modified by the laws of the United Kingdom from time to time, the Data Protection Act 2018 and any successor, secondary legislation or regulations as amended or updated from time to time.

Deliverables: any documents, products and materials created or developed by or on behalf of the Supplier as part of or in connection with the provision of the Services.

Delivery Date: shall be the date set out in the order.

Delivery Location: means the address or addresses for delivery of the Goods as set out in the order or such other address as notified by Hornbeck to the Supplier.

Effective Date: shall be the date that the order is accepted by the Supplier either expressly or by conduct.

Goods: means the goods and related accessories, spare parts and documentation and other physical material set out in the Order or understood by the parties to be included in the goods and to be supplied by the Supplier to Hornbeck.

Goods Specification: any specification for the Goods, including related plans and drawings, agreed in writing by Hornbeck and the Supplier.

Intellectual Property Rights: patents, copyright, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, 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.

Hornbeck Materials: all documents, information, items and materials in any form (whether owned by Hornbeck or a third party), which are provided by Hornbeck to the Supplier in connection with the Services.

Mandatory Policies: the policies and codes of conduct of Hornbeck including relating to anti-bribery, modern slavery, ethics, corporate and social responsibility as notified by Hornbeck to the Supplier from time to time.

Payment Terms: shall mean the payment terms agreed by the parties and if no such terms are agreed, Hornbeck shall pay any invoice correctly and properly submitted to it, within 30 days of the end of the month following receipt of the invoice.

Order: shall mean the purchase order submitted by Hornbeck.

Price: shall be the price specified in the order.

Services: the services, including any Deliverables, set out in the order or understood by the parties to be included in the services to be supplied by the Supplier to Hornbeck.

Services Commencement Date: shall be the date set out in the order.

Supplier: the Company, person, business or organisation supplying goods and/or services to Hornbeck.

Supplier Materials: all documents, information, items and materials in any form (whether owned by the Supplier or a third party), which are used by the Supplier in connection with the provision of the Goods and/or Services.

Term: has the meaning set out in the order.

2.1 Clause headings shall not affect the interpretation of this Agreement.

2.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.

2.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. Commencement and Duration

3.1 This Agreement will come into effect on the Effective Date and will continue for the Term, unless terminated earlier by either party as set out in this Agreement.

4. Supply of Goods

4.1 The Supplier shall ensure that the Goods shall:

4.1.1 correspond with their description and any applicable Goods Specification;

4.1.2 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 Hornbeck, expressly or by implication, and in this respect Hornbeck relies on the Supplier's skill and judgement;

4.1.3 where they are manufactured, be free from defects in design, materials and workmanship and remain so for 24 months after the Delivery Date; and

4.1.4 comply with all applicable laws, regulations, regulatory policies, guidelines or requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods including all relevant quality standards applicable to such Goods.

4.2 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 this Agreement in respect of the Goods.

4.3 Hornbeck 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 this Agreement.

4.4 If following such inspection or testing Hornbeck considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 4.1, Hornbeck shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.5 Hornbeck may, at the Supplier's expense, conduct further inspections and tests after the Supplier has carried out its remedial actions.

5. Delivery of Goods

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), the weight of the Goods, any special handling or storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

5.1.3 it states clearly on the delivery note any requirement for Hornbeck 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.

5.2 Unless otherwise notified to it by Hornbeck, the Supplier shall deliver the Goods:

5.2.1 on the Delivery Date;

5.2.2 to the Delivery Location; and

5.2.3 during Hornbeck's normal hours of business.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 Where Goods are delivered in instalments, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Hornbeck to the remedies set out in clause 7.

5.5 Title and risk in the Goods shall pass to Hornbeck on delivery of the Goods (whether in full or in part if delivery is made by instalments) at the Delivery Location.

6. Supply of Services

6.1 The Supplier shall from Service Commencement Date and for the duration of this Agreement supply the Services to Hornbeck in accordance with the terms of this Agreement.

6.2 The Supplier shall meet any performance dates for the Services and time is of the essence in relation to any of those performance dates.

6.3 In providing the Services, the Supplier shall:

6.3.1 co-operate with Hornbeck in all matters relating to the Services, and comply with all instructions of Hornbeck;

6.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

6.3.3 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 this Agreement;

6.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications and that the Deliverables shall be fit for any purpose that Hornbeck expressly or impliedly makes known to the Supplier;

6.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

6.3.6 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 Hornbeck, will be free from defects in workmanship, installation and design;

6.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

6.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services including all relevant quality standards applicable to such Services and the Mandatory Policies;

6.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of Hornbeck's premises;

6.3.10 hold Hornbeck's Materials in safe custody at its own risk, maintain Hornbeck Materials in good condition until returned to Hornbeck, and not dispose or use Hornbeck Materials other than in accordance with Hornbeck's written instructions or authorisation; and

6.3.11 not do or omit to do anything which may cause Hornbeck to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Hornbeck may rely or act on the Services.

7. Hornbeck Remedies

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Hornbeck shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

7.1.1 to terminate this Agreement with immediate effect by giving written notice to the Supplier;

7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

7.1.3 to recover from the Supplier any costs incurred by Hornbeck in obtaining substitute goods and/or services from a third party;

7.1.4 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

7.1.5 to claim damages for any additional costs, loss or expenses incurred by Hornbeck which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Goods are not delivered by the Delivery Date, Hornbeck may, at its option, claim or deduct 2% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% of the total price of the Goods. If Hornbeck exercises its rights under this clause 7.2 it shall not be entitled to any of the remedies set out in clause 7.1 in respect of the Goods' late delivery.

7.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting or affecting other rights or remedies available to it, Hornbeck shall have one or more of the following rights, whether or not it has accepted the Goods:

7.3.1 to terminate this Agreement with immediate effect by giving written notice to the Supplier;

7.3.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

7.3.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

7.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

7.3.5 to recover from the Supplier any expenditure incurred by Hornbeck in obtaining substitute goods from a third party; and

7.3.6 to claim damages for any additional costs, loss or expenses incurred by Hornbeck arising from the Supplier's failure to supply Goods in accordance with clause 4.1.

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

7.5 Hornbeck's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

8. Hornbeck Obligations

8.1 Hornbeck shall:

8.1.1 provide such necessary information for the provision of the Goods and/or Services as the Supplier may reasonably request; and

8.1.2 provide access to Hornbeck's premises or facilities as may reasonably be requested by the Supplier and agreed with the Supplier in writing in advance, for the purposes of this Agreement.

9. Pricing and Payment Terms

9.1 In consideration of the provision of the Goods and/or Services by the Supplier, Hornbeck agrees to pay the Price in accordance with the Payment Terms.

9.2 The Price shall be inclusive of the costs of packaging, insurance and carriage of the Goods and include all costs and expenses of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 Unless otherwise agreed by the parties in writing, the Supplier shall invoice Hornbeck after completion of delivery of the Goods and/or on completion of the Services (as applicable).

Notwithstanding the Delivery Location, all invoices shall be sent to Hornbeck at the address indicated on the order.

9.4 Hornbeck shall pay each invoice within 30 days of the end of the month of receipt, or such other date as agreed in writing between the parties, to a bank account nominated in writing by the Supplier from time to time.

9.5 The Price does not include any VAT or other governmental taxes, duties, fees and levies ("**Taxes"**). If Taxes are payable in respect of the Price, Hornbeck shall be liable for payment of such Taxes.

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

9.7 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 Hornbeck to inspect such records at all reasonable times on request.

10. Intellectual Property

10.1 Hornbeck will own any Intellectual Property Rights existing in the Hornbeck Materials and any Deliverables. Hornbeck grants the Supplier a personal, non-exclusive, non-transferable licence to use the Hornbeck Materials for the purposes of this Agreement.

10.2 The Supplier will own any Intellectual Property Rights existing in the Supplier Materials. The Supplier grants Hornbeck a personal, non-exclusive, non-transferable licence to use the Supplier Materials for the purposes of this Agreement.

11. Limitation on Liability

11.1 Nothing in this Agreement shall limit or exclude Hornbeck's or the Supplier's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or sub-contractors;

11.1.2 fraud or fraudulent misrepresentation; or

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1, Hornbeck shall not have any liability to the Supplier whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, goodwill, business opportunities or anticipated savings or benefits, or for any loss of corruption of data or for any indirect or consequential loss arising under or in connection with this Agreement.

11.3 Hornbeck's total aggregate liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the Price paid by Hornbeck under this Agreement in the 12 months preceding the date the liability arose or £100,000 whichever is the lower sum.

12. Representations and Warranties and Undertakings

12.1 Each party represents, warrants and undertakes to the other that:

12.1.1 it has full capacity and authority to enter into and to perform this Agreement;

12.1.2 this Agreement is executed by a duly authorised representative of that party;

12.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against of affecting that party before any court or administrative body that might affect the ability of that party to meet and carry out its obligations under this Agreement;

12.1.4 it conducts its business in a manner that is consistent with the Mandatory Policies; and

12.1.5 once duly executed this Agreement will constitute its legal, valid and binding obligations.

13. Indemnity

13.1 The Supplier shall indemnify Hornbeck against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Hornbeck arising out of or in connection with:

13.1.1 any claim made against Hornbeck 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 Hornbeck Materials);

13.1.2 any claim made against Hornbeck by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

13.1.3 any claim made against Hornbeck by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;

13.1.4 any breach of the Mandatory Policies.

14. Confidential Information

14.1 Each party undertakes at any time during this Agreement, and for a period of 10 years after termination, not to disclose, copy or use any Confidential Information except as permitted by clause 14.2.

14.2 Each party may disclose the other party's Confidential Information to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15. Data Protection

15.1 Both parties agree to comply with their obligations under the General Data Processing Regulation (GDPR) and Data Protection Act 2018 (and all other applicable statutes, directives, or regulations which may supplement, amend, or replace same and relate to data privacy) in respect of any Personal Data, which it supplies or receives under, or in connection with, this Agreement in its role as either Data Controller or Data Processor. Where a party is Data Controller it will ensure that it has obtained from all relevant Employees all consents which may be necessary in order for it, or the Data Processor, to lawfully process Personal Data about those Employees for the purposes of delivering the Services and Products.

15.2 Both parties warrant that they will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data.

16. Reporting and Audit

16.1 The Supplier shall:

16.1.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to Hornbeck in connection with this Agreement;

16.1.2 permit Hornbeck and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of the Mandatory Policies, to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations and with the Mandatory Policies.

17. Termination and Consequences of Termination

17.1 Without affecting any other right or remedy available to it, Hornbeck may terminate this Agreement:

17.1.1 with immediate effect by giving written notice to the Supplier if:

a) there is a change of Control of the Supplier; or

b) the Supplier's financial position deteriorates to such an extent that in Hornbeck's opinion the Supplier's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy; or

c) the Supplier commits a breach of clauses 14,15 or the Mandatory Policies.

17.1.2 for convenience by giving the Supplier 30 days' written notice.

17.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement immediately on written notice to the other if:

17.2.1 the other party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days of being notified in writing to do so;

17.2.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

17.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;

17.2.4 an application is made to the court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or

17.2.5 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

17.3 On termination of this Agreement, the Supplier shall immediately deliver to Hornbeck all Deliverables whether or not then complete and return all Customer Materials. If the Supplier fails to do so, then Hornbeck 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 this Agreement.

17.4 The expiry or termination of this Agreement shall not affect the accrued rights, remedies,

obligations or liabilities of the parties under it existing at expiry or termination.

17.5 The following clauses shall continue in force: clause 10 (Intellectual Property), clause 11 (Limitation of Liability), clause 13 (Indemnity), clause 14 (Confidentiality), clause 15 (Data Protection), clause 17 (Consequences of Termination), clause 18 (Force Majeure), clause 19 (Insurance), clause 20(General) and any other provision of this Agreement which expressly or by implications is intended to continue.

18. Force Majeure

18.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 20 days or more, the party not affected may terminate this Agreement by giving 5 Business Days' written notice to the other party.

19. Insurance

19.1 During the Term and for 6 years thereafter, the Supplier shall, at its expense, maintain in force with a reputable insurance company, adequate insurance covering the supply of the Goods and/or Services and its liabilities under this Agreement including as a minimum employer's liability insurance for no less than £10,000,000, public liability insurance for no less than £5,000,000 and product liability insurance for no less than £5,000,000 in each case per event increasing annually in accordance with the UK retail prices index. The Supplier shall, on Hornbeck's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

20. General

20.1 **Dispute Resolution:** Subject to either party's rights and remedies under this Agreement, the parties agree to use all reasonable efforts to negotiate and amicably resolve any disputes in relation to this Agreement by senior level negotiations.

20.2 **Publicity:** Neither party shall make any public announcement regarding the existence or subject matter of this Agreement without the prior written consent of the other party.

20.3 **Notices:** Any notice given in respect of this Agreement shall be deemed to have been given if delivered personally (including by courier) to either party at their respective addresses indicated on the order, or at such other address as may be notified by either party from time to time in writing, at the time of delivery or if sent by prepaid, recorded delivery, or first class post in the UK, 2 Business Days after posting or if outside the UK 7 Business Days after posting.

20.4 **Assignment:** The Supplier shall not assign nor in any manner transfer any interest or claim in this Agreement to any third party, unless authorised in advance in writing by Hornbeck, such authorisation not to be unreasonably withheld or delayed.

20.5 **Sub-contracting:** The Supplier may only sub-contract its rights or obligations under this Agreement with the prior written consent of Hornbeck.

20.6 **Severability:** If any provision of this Agreement (or part of any provision) is held by any competent authority to be invalid, illegal or unenforceable, that provision or part-provision shall,

to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

20.7 **Amendment:** No amendment or variation of this Agreement shall be effective unless it is in writing and signed by an authorised representative of the parties.

20.8 **Entire Agreement:** This Agreement constitutes the whole Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter.

20.9 **No Partnership or Agency:** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.

20.10 **Third Party Rights:** A person who is not a party to this Agreement may not enforce any of its terms under this Agreement (Rights of Third Parties) Act 1999.

20.11 **Costs:** Each party shall pay their own costs and expenses incurred by it in connection with the entering into of this Agreement.

20.12 **Counterparts**: This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

20.13 **Law and Jurisdiction:** This Agreement and any non-contractual rights or obligations arising out of or in relation to it, shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts for any dispute arising in connection with this Agreement.