

TERMS OF PURCHASE (GOODS & SERVICES) OF ARROW XL LIMITED ('ARROWXL')

1. DEFINITIONS & INTERPRETATION

Confidential Information means (a) any information designated, labelled or marked confidential; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of a party; (ii) the operations, processes, product information, know-how, designs, trade secrets or software of a party; and (c) any information or analysis derived from any information regarded as confidential pursuant to (a) or (b).

Deliverables means all data and materials (in any form or media) developed or supplied by or on behalf of the Supplier in the course of providing the Services.

Goods means the goods set out in the Specification and the Order.

Insolvency Event means in respect of either party:

(a) **Winding Up**: other than for the purposes of a bona fide reconstruction or amalgamation having no impact on the fulfilment of the relevant party's obligations under the Agreement, the passing of a members' or creditors' voluntary winding up resolution or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise wound up or dissolved; or

(b) **Administration, Liquidation, Receivership or Administrative Receivership**: the appointment of a receiver, liquidator, administrative receiver or administrator (or similar or equivalent officer), the passing of any resolution for the appointment of such person or the issue of any notice of intention to appoint such person; or

(c) **Encumbrancer**: an encumbrancer taking possession of or selling the whole or any part of the entity's undertaking, assets, rights or revenue; or

(d) **Payment of Debts**: that party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986;

or any cessation of business or any proceedings analogous or substantially equivalent to the foregoing.

Intellectual Property Rights means intellectual property rights of any kind in any jurisdiction whether registered or unregistered including all applications and rights to apply for and be granted such rights.

Losses means all damages, losses, liabilities, claims, settlement sums, costs and expenses (including fees and disbursements for legal or professional services) howsoever arising.

Order means ArrowXL's standard purchase order incorporating these Terms of Purchase.

Services means the services, including without limitation any Deliverables, to be provided by the Supplier under the Agreement as set out in the Specification and the Order.

Specification means the specification and description for the Goods and Services set out in the Order.

Supplier means the party named on the Order as the supplier of the Goods and/or the Services to ArrowXL.

Terms means these Terms of Purchase (including any document referred to in them).

ArrowXL Group means ArrowXL, any subsidiary or any immediate holding company from time to time of ArrowXL, and any subsidiary from time to time of such immediate holding company (reference to a holding company or a subsidiary shall mean a holding company or subsidiary as

defined in section 1159 of the Companies Act 2006 as at the date of the Agreement).

Unless the context otherwise requires, a reference to a statute, statutory provision or subordinate legislation is a reference to such statute or statutory provision as amended or re-enacted from time to time.

2. BASIS OF AGREEMENT

2.1 The Order is placed pursuant to these Terms (the Order and Terms together constituting the "**Agreement**").

2.2 These Terms are incorporated in every Order and shall apply to the exclusion of any other terms and conditions which the Supplier seeks to incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 ArrowXL shall have no obligation to order any, or any minimum quantities of, Goods or Services.

2.4 ArrowXL may prior to dispatch of Goods or provision of Services cancel or amend any Order in writing. ArrowXL will reimburse the reasonable costs of the Supplier in fulfilling the Order prior to cancellation or amendment and the Supplier will use all reasonable endeavours to mitigate such costs. ArrowXL shall not be liable for such costs where cancellation or amendment is caused by an act or default of the Supplier or any party acting on the Supplier's behalf.

2.5 The Agreement is entered into on a non-exclusive basis.

3. SUPPLY, DELIVERY AND SHIPMENT OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with the Order, any description provided by the Supplier or agreed between the parties and the Specification;

3.1.2 be of satisfactory quality and fit for purpose (within the meaning of the Sale of Goods Act 1979) and be free from defects in design, materials and workmanship;

3.1.3 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.1.4 be accompanied by a delivery note containing the date of the Order, relevant purchase order number, details of type and quantity of Goods (including any applicable code number for the Goods), special storage instructions (if any) and any other information as ArrowXL may reasonably require.

3.2 The Supplier shall deliver the Goods on the date and to the location specified in the Order during normal business hours (or to any other location instructed by ArrowXL) ("**Delivery Location**").

3.3 The Supplier shall not deliver the Goods in instalments without ArrowXL's prior written consent.

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

3.5 Risk in the Goods shall pass to ArrowXL on completion of delivery in accordance with the Agreement.

3.6 Title in the Goods shall pass to ArrowXL on the earlier of completion of delivery in accordance with the Agreement and payment in full by ArrowXL for the Goods.

4. SUPPLY OF SERVICES

4.1 The Supplier shall provide the Services to ArrowXL in accordance with the terms of the Agreement.

4.2 The Supplier shall meet any performance dates for the Services specified in the Specification or the Order or as notified to the Supplier by ArrowXL.

4.3 In providing the Services, the Supplier shall:

- 4.3.1 co-operate with ArrowXL and its representatives in all matters relating to the Services, and comply with all reasonable instructions of ArrowXL;
 - 4.3.2 perform the Services in accordance with good industry practice;
 - 4.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them;
 - 4.3.4 ensure that the Services and Deliverables conform with all descriptions and specifications in the Specification, and that the Deliverables are fit for any purpose made known to the Supplier by ArrowXL;
 - 4.3.5 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used during the Services or transferred to ArrowXL, will be free from defects in workmanship, installation and design;
 - 4.3.6 observe all health and safety rules and regulations and any other security requirements that apply at any of ArrowXL's premises;
 - 4.3.7 hold all materials, equipment and tools, drawings, specifications and data supplied by ArrowXL to the Supplier ("**Customer Materials**") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to ArrowXL, and not dispose of or use the Customer Materials other than in accordance with ArrowXL's written instructions;
 - 4.3.8 not do or omit to do anything which may cause ArrowXL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business or otherwise bring the business of ArrowXL into disrepute; and
 - 4.3.9 ensure that all written information provided to ArrowXL in relation to the Services is accurate and complete in all material respects.
- 5. ARROWXL REMEDIES**
- 5.1 If the Supplier fails to deliver the Goods and/or perform the Services by the delivery and/or performance date, or if the Supplier delivers the Goods or performs the Services in a manner that does not comply with the undertakings set out in clauses 3 or 4, ArrowXL shall, at the Supplier's risk and expense and without limiting its other rights or remedies, have one or more of the following rights:
 - 5.1.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier;
 - 5.1.2 to require the Supplier to repair or replace the rejected Goods;
 - 5.1.3 to require the Supplier to re-perform the Services;
 - 5.1.4 to cancel any other Order for Goods and/or Services which has already been placed;
 - 5.1.5 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods; and
 - 5.1.6 to require the Supplier to provide a full refund of the price paid for any Goods and/or Services which do not comply with the undertakings set out in clauses 3 or 4.
 - 5.2 The terms of the Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6. ARROWXL'S OBLIGATIONS**
- 6.1 ArrowXL shall:
 - 6.1.1 provide the Supplier with reasonable access at reasonable times to ArrowXL's premises for the purposes of delivering the Goods and providing the Services; and
 - 6.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and ArrowXL considers reasonably necessary for the purpose of providing the Services.
- 7. CHARGES AND PAYMENT**
- 7.1 The charges for the Goods and the Services shall be as set out in the Order, and shall be the full and exclusive remuneration of the Supplier for the supply of the Goods and Services and shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods and Services.
 - 7.2 The Supplier shall invoice ArrowXL on or at any time after completion of delivery of the Goods or completion of the Services. Each invoice shall include such supporting information as required by ArrowXL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
 - 7.3 In consideration for the supply of Goods and/or Services by the Supplier, ArrowXL shall pay the invoiced amounts (to the extent undisputed) within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
 - 7.4 All amounts payable by ArrowXL under the Agreement are exclusive of VAT which ArrowXL shall pay on receipt of a valid VAT invoice.
 - 7.5 If a party fails to make any payment due to the other party under the Agreement by the due date for payment, then (to the extent such amount is undisputed) the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. The parties acknowledge that this will be a substantial remedy for the purposes of the Late Payment of Commercial Debts Regulations 2013.
 - 7.6 ArrowXL may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to ArrowXL (or to any member of ArrowXL Group) whether under the Agreement or otherwise against any liability of ArrowXL (or any member of ArrowXL Group) to the Supplier whether under the Agreement or otherwise (whether either liability is present or future, actual or contingent, liquidated or unliquidated, disputed or undisputed).
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 In respect of the Goods and any Deliverables, the Supplier warrants that it has full clear and unencumbered title to all such items, and that (i) at the date of delivery to ArrowXL, it will have full and unrestricted rights to sell and transfer all such items to ArrowXL; and (ii) ArrowXL will enjoy quiet possession of such items.
 - 8.2 The Supplier assigns to ArrowXL, including by present assignment of future rights, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables.
 - 8.3 The Supplier warrants to ArrowXL that the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (including the Deliverables) will not infringe the Intellectual Property Rights of any third party.
 - 8.4 To the extent that it is necessary for any Intellectual Property Rights of ArrowXL to be temporarily licensed to the Supplier for the Supplier to supply the Goods and/or the Services in accordance with the Specification (e.g. items featuring ArrowXL branding), such licence shall be royalty free and limited to the minimum extent necessary to allow the Supplier to supply the Goods and/or the Services in accordance with the Specification and shall expire immediately thereafter.

8.5 The Supplier shall indemnify and keep ArrowXL indemnified against all Losses incurred by ArrowXL, its representatives and any member of ArrowXL Group, as a result of or in connection with any claim made against ArrowXL, its representatives or any member of ArrowXL Group, 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.

9. INDEMNITY

9.1 The Supplier shall indemnify and keep ArrowXL indemnified against all Losses incurred by ArrowXL, its representatives and any member of ArrowXL Group, as a result of or in connection with:

- 9.1.1 death or personal injury resulting from the negligence of the Supplier or its representatives;
- 9.1.2 damage to real or personal property caused by the Supplier or its representatives;
- 9.1.3 the fraud and/or wilful misconduct or wilful default of the Supplier or its representatives; and
- 9.1.4 any negligent act or omission or breach of the Agreement by the Supplier or its representatives.

10. INSURANCE

10.1 The Supplier shall maintain in force, with a reputable insurance company, appropriate insurance (acting in accordance with best industry practice) to cover the liabilities that may arise under or in connection with this Agreement.

11. CONFIDENTIALITY AND DATA PROTECTION

11.1 Each party shall (i) keep all Confidential Information of the other party strictly confidential; and (ii) use such Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any third party.

11.2 The provisions of clause 11.1 will not apply to any Confidential Information required to be disclosed pursuant to law, any governmental or regulatory authority or by a court or tribunal of competent jurisdiction but then only to the extent of such required disclosure and provided (to the extent it is legally permitted to do so) the relevant party agrees the nature and extent of any disclosure in advance with the other party.

11.3 Notwithstanding clause 11.1, a party shall be permitted to disclose Confidential Information to its personnel or professional advisors and, in the case of ArrowXL, to ArrowXL Group, on a need to know basis for the performance of its obligations or receipt of benefits under the Agreement provided always that it procures that any recipient complies with confidentiality obligations equivalent to those set out in this clause 11.

11.4 On the termination or expiry of the Agreement each party shall promptly return or (where directed by the other party) otherwise securely dispose of, all Confidential Information of the other party.

11.5 Neither party will make any announcement or publicity statement relating to the existence of the Agreement or its subject matter without the other party's prior written consent (except as required by law or by any legal or regulatory authority).

11.6 In the event that ArrowXL transfers any 'personal data' (as defined in the General Data Protection Regulation - 'GDPR') to the Supplier, the Supplier shall comply with all applicable data protection and privacy legislation for the time being in force including the GDPR regarding the processing of such personal data regardless of whether the Supplier is classified as a processor or a controller within the meaning of the GDPR. Where applicable and upon request the Supplier shall complete and execute ArrowXL's standard Data Processing Agreement as may

be modified from time to time and in doing so this shall be incorporated into these Terms and the Agreement. Failure by the Supplier to comply with this provision shall be a material breach of the Agreement and these Terms giving rise to an immediate right for ArrowXL to terminate the same.

11.7 Each party will indemnify the other (including, in the case of ArrowXL, each member of ArrowXL Group), against all Losses incurred as a result of or in connection with any breach by that party or anyone acting on behalf of that party of this clause 11.

11.8 The obligations in this clause shall continue for a period of 5 years following termination.

12. TERM & TERMINATION

12.1 This Agreement shall commence on the date set out in the Order (or such other date as ArrowXL may agree in writing) and will continue for the period set out in the Order or, if no such period is stated, then until the completion of the supply of the Goods and/or Services in accordance with the requirements of the Agreement.

12.2 Without limiting its other rights or remedies, ArrowXL may terminate the Agreement with immediate effect and without liability in respect of such termination by giving written notice to the Supplier if:

- 12.2.1 the Supplier commits a breach of any of clauses 8 (Intellectual Property Rights), 10 (Insurance), 11 (Confidentiality and Data Protection), or 16.11 (Compliance with Code of Conduct);
- 12.2.2 an Insolvency Event occurs in relation to the Supplier; or
- 12.2.3 the Supplier sells or disposes of the whole or a material part of its business or assets or there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010 as at the date of the Agreement).

12.3 Termination of the Agreement shall not affect either of the parties' rights and remedies accrued as at termination.

12.4 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect including without limitation clauses 8, 9, 11, 16.2, 16.6, 16.9, 16.13.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Agreement for any reason, the Supplier shall immediately deliver to ArrowXL all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then ArrowXL may enter the Supplier's premises and take possession of them. The Supplier shall pay ArrowXL's reasonable costs and expenses incurred in enforcing this clause 13.1.

14. FORCE MAJEURE

14.1 Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure directly results from an event beyond its reasonable control.

14.2 If such an event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than one calendar month, ArrowXL may terminate the Agreement immediately and without liability in respect of such termination by giving written notice to the Supplier.

15. TUPE

15.1 The parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') is not intended to apply on the commencement, termination or partial termination of the Services and it is the responsibility of the Supplier to manage its resources such that a TUPE transfer will not occur.

15.2 The Supplier will indemnify ArrowXL and, where appropriate, any new supplier of services similar to the Services, on termination or partial termination of the Agreement (“**New Supplier**”) in full for all Losses incurred by ArrowXL and/or any New Supplier relating to the employment or alleged employment of any person by the Supplier or its subcontractors; including without limitation all claims of whatever nature made by such person and any claims concerning the alleged failure to inform and consult with employees or their representatives whether such claims were made before or after the date of the Agreement.

16. GENERAL

16.1 Licences & Applicable Law

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 Agreement and complies with all applicable laws and regulations including but not limited to all relevant health and safety legislation, the Bribery Act 2010, the Data Protection Act 1998 and the Modern Slavery Act 2015.

16.2 Audit

The Supplier shall maintain complete and up to date records and documentation in connection with its obligations under the Agreement. The Supplier shall allow ArrowXL to inspect such records and documentation at all reasonable times on request.

16.3 Cumulative Rights and Remedies

Except as expressly provided under the Agreement, the rights and remedies contained in the Agreement are cumulative and not exclusive of any other rights or remedies whether under the Agreement or by operation of law.

16.4 Assignment and other dealings

(a) ArrowXL may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.

(b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of ArrowXL.

(c) Any subcontracting shall not relieve the Supplier of its obligations under the Agreement and any act or omission of any subcontractor shall be deemed to be the act or omission of the Supplier.

16.5 Notices

Any notice given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office and shall be sent by first class post. A notice shall be deemed to have been received at the time that the relevant delivery receipt is signed.

16.6 Severance

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified or deleted to the minimum extent necessary to make it valid, legal and enforceable. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

16.7 Waiver

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy.

No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.8 No partnership or agency

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

16.9 Third party rights

(a) The parties acknowledge and agree that ArrowXL enters into the Agreement on its own behalf and on behalf of all other members of ArrowXL Group, and accordingly:

(i) any member of ArrowXL Group shall be entitled to receive the benefit of the Agreement as if it were a party to the Agreement, provided always that members of ArrowXL Group may only receive the benefit of the Agreement at the discretion of and in accordance with the directions of ArrowXL;

(ii) ArrowXL may enforce the terms of the Agreement on behalf of any member of ArrowXL Group and any Losses of such member of ArrowXL Group shall be deemed to be Losses of ArrowXL and shall be deemed recoverable by ArrowXL (and shall not be treated as being indirect, special or consequential by reason only of the fact that it has been suffered by a member of ArrowXL Group and not by ArrowXL directly);

(iii) nothing in this clause 16.9(a) shall permit ArrowXL to double recover the same Losses.

(b) Subject to clause 16.9(a), a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

(c) The parties to the Agreement may vary, terminate or rescind the Agreement without the consent of any other member of ArrowXL Group.

16.10 Variations

Except as set out in the Agreement, no variation of the Agreement shall be effective unless it is agreed in writing and signed by a director of each of the parties.

16.11 Compliance with Code of Conduct

The Supplier shall comply with ArrowXL's Supplier Code of Conduct as published on the ArrowXL website.

16.12 Entire Agreement

The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements in relation to the Goods and the Services.

16.13 Governing Law & Jurisdiction

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and shall be governed by, and construed in accordance with the law of England.