

Cygnia Logistics Limited

CONDITIONS OF PURCHASE FOR GOODS AND/OR SERVICES

INTERPRETATION

1.1 In these Conditions, the following definitions apply:

“Applicable Law”	means in England any and all applicable laws, regulations and industry standards or guidance (including any applicable British Standard) and any applicable and binding judgment of a relevant court of law;
“Agreement”	means the agreement between Cygnia and the Supplier for the Supply of Goods and/or Services in accordance with these Conditions and the relevant Purchase Order;
“Commencement Date”	has the meaning given in clause 2.2;
“Conditions”	means these terms and conditions as amended from time to time in accordance with clause 27.3;
“Confidential Information”	has the meaning given in clause 15.1;
“Day(s)”	means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
“Delivery”	means completion of delivery of Goods under a Purchase Order in accordance with clause 4.6;
“Delivery Address”	means the site or address specified for delivery of Goods in a Purchase Order;
“Delivery Date”	means the date specified for delivery of Goods as set out in a Purchase Order;
“Good Industry Practice”	means the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar goods and services to an entity of a similar size and nature as Cygnia under the same or similar circumstances;
“Goods Specification”	means the specification and design criteria relating to the Goods as set out in the relevant Purchase Order or as notified to the Supplier by Cygnia;
“Goods”	means the goods to be supplied by the Supplier under the Agreement and as set out in the relevant Purchase Order or as notified to the Supplier by Cygnia;
“Group”	means for a party, all group undertakings of that party (“group undertaking” having the meaning given to it under section 1161(5) of the Companies Act 2006) and any reference to a “Group Company” means any such group undertaking;
“Intellectual Property Rights”	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
“Losses”	means all damages, losses (whether direct, indirect or consequential), liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgments, consensual settlements, penalties, fines, demands, interest and charges whether arising under statute, in tort (including negligence), in contract or otherwise;
“Materials”	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
“Price”	means the price for the Goods and/or the charge for the Services as set out in the relevant Purchase Order;
“Purchase Order”	means Cygnia's order for the supply of Goods and/or Services;
“Replacement Supplier”	means any third party provider appointed by Cygnia to provide goods or services which are identical or substantially similar to any part of the Goods or Services following the termination or expiry of the Agreement;
“Representatives”	means the representatives of the parties appointed under clause 23.1;
“Service Specification”	means the description or specification for Services set out in the relevant Purchase Order or as otherwise notified to the Supplier by Cygnia;
“Services”	means the services, including any Materials, to be provided by the Supplier as set out under the Agreement or as otherwise notified by Cygnia to the Supplier;
“Supplier Personnel”	means the personnel engaged by the Supplier in the provision of the Services;
“Term”	means the term of the Agreement, as determined in accordance with clause 19.1;
“Transfer Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended); and
“Cygnia Policies”	means Cygnia's policies in force from time to time which apply to suppliers of goods and services as specified on Cygnia's website .

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- (iv) Cygnia's instructions from time to time.
- (b) a references to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute, statutory provision or to Applicable Law is a reference to such statute, statutory provision or Applicable Law as amended, superseded or re-enacted from time to time. A reference to a statute, statutory provision or to Applicable Law includes any subordinate legislation made under that statute, statutory provision or Applicable Law, as amended, superseded or re-enacted from time to time;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to **writing** or **written** includes faxes and e-mails; and
- (f) references to **clauses** are to the clauses these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 2. ORDERS**
- 2.1 The Purchase Order constitutes an offer by Cygnia to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Purchase Order; or
- (b) any act by the Supplier consistent with fulfilling the Purchase Order.
- at which point and on which date the Agreement shall come into existence (Commencement Date).
- 2.3 Cygnia may at any time prior to despatch of the Goods and/or delivery of the Services amend or cancel a Purchase Order by written notice to the Supplier. If Cygnia amends or cancels a Purchase Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred (and agreed by Cygnia in writing) by the Supplier in fulfilling the Purchase Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under these Conditions Cygnia shall have no liability to the Supplier in respect of it.
- 2.4 The parties acknowledge and agree that Cygnia remains free during the Term to engage third party suppliers of goods and/or services similar or identical to the Goods and/or Services.
- 2.5 The relationship of the Supplier to Cygnia shall be that of independent contractor and nothing contained in the Agreement shall create a relationship of employer and employee, principal and agent or partnership between Cygnia and the Supplier
- 2.6 These Conditions shall apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3. SUPPLY OF GOODS**
- 3.1 The Supplier warrants that the Goods shall:
- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Cygnia, expressly or by implication, and in this respect Cygnia relies on the Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship; and
- (d) be manufactured, labelled, packaged, stored, handled and delivered in accordance with:
- (i) all Applicable Law;
- (ii) Good Industry Practice;
- (iii) Cygnia's Policies; and
- 3.2 The Supplier shall assign to Cygnia any assignable manufacturer's warranty or other guarantee applicable to the Goods or any of them to the extent permitted. If the Supplier becomes insolvent, any such warranties and guarantees shall be deemed to have been assigned immediately prior to the onset of insolvency.
- 3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 3.4 If the Goods include electrical and electronic equipment, the Supplier warrants that it or the producer of such equipment is a member of a scheme in accordance with the Waste Electrical and Electronic Equipment Regulations 2013 ("**WEEE**") and undertakes promptly to provide Cygnia with the applicable producer registration number under such scheme. In this clause 3.4 "**electrical and electronic equipment**", "**producer**" and "**scheme**" have the meanings given to them in WEEE.
- 3.5 Cygnia shall have the right to enter the Supplier's premises to inspect and test the Goods at any time before delivery.
- 3.6 If following such inspection or testing Cygnia considers that the Goods do not conform or are unlikely to comply with the Supplier's warranties in clause 3.1, Cygnia shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Cygnia shall have the right to re-conduct inspections and tests after the Supplier has carried out its remedial actions.
- 3.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
- 4. DELIVERY OF GOODS**
- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) it provides all and any information in relation to the Goods which shall be required by Applicable Law and all containers, packages and documents relating to the Goods shall be prominently marked with appropriate international danger symbols and the name of the Goods in English; and
- (d) it observes all UK and international agreements relating to the packaging, labelling and carriage of hazardous goods.
- 4.2 If the Supplier requires, Cygnia shall return any packaging material for the Goods to the Supplier, provided that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.3 The Supplier shall supply Cygnia with the Goods in such quantities and in such a manner as is specified in a Purchase Order.
- 4.4 The Goods shall be delivered to the Delivery Address at the Supplier's cost and expense, on the Delivery Date between the hours of 9.00am to 5.00pm or as otherwise agreed between the parties in writing. The time for delivery of the Goods is of the essence.
- 4.5 Failure to provide the information specified under clause 4.1(b) will result in non-acceptance of delivery or non-payment of invoice until such information is provided.

- 4.6 Delivery of the Goods shall be deemed completed on the completion of unloading of the Goods at the Delivery Address.
- 4.7 The Supplier shall not deliver the Goods in instalments without Cygnia's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Cygnia to the remedies set out in clause 8.1.
- 4.8 The risk in the Goods shall pass to Cygnia on Delivery.
- 4.9 Title to each of the Goods shall pass to Cygnia on the earlier of:
- (a) Cygnia's payment for such Goods; and
 - (b) Delivery.
- Nothing in this clause 4.9 shall prevent Cygnia from using or selling the Goods prior to title passing.
- 4.10 The Supplier warrants that, on the date of Delivery, the Supplier shall have the full and unrestricted right to sell the Goods to Cygnia.
- 4.11 Cygnia shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery and has receipted the Goods on the Cygnia Oracle system, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 5. SUPPLY OF SERVICES**
- 5.1 In providing the Services, the Supplier warrants that it shall:
- (a) perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice and the Service Levels; only use Supplier Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - (b) meet any performance dates for the Services specified in a Purchase Order or notified to the Supplier by Cygnia;
 - (c) ensure that the Services and Materials conform with all descriptions and specifications set out in the Service Specification;
 - (d) provide all equipment, tools, machinery and vehicles and such other items as are required to provide the Services;
 - (e) use the best quality goods, materials, standards and techniques, and ensure that the Materials, and all goods and materials supplied and used in the Services or transferred to Cygnia, will be free from defects in workmanship, installation and design and that the Materials are of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982) and fit for any purpose expressly or impliedly made known to the Supplier by Cygnia;
 - (f) co-operate with Cygnia in all matters relating to the Services, and comply with all instructions of Cygnia;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Law;
 - (h) comply with the Cygnia Policies and observe all health and safety rules and regulations and any other security requirements that apply at any of Cygnia's premises; and
 - (i) not do or omit to do anything which may cause Cygnia to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Cygnia may rely or act on the Services.
- 6. INSTALLATION, TESTING AND ACCEPTANCE**
- 6.1 In the event that the Supplier installs the Goods as part of the Services, then the provisions of this clause 6 and clause 7 shall apply.
- 6.2 Where the Goods are replacing existing products which are the same or have a similar function to the Goods (the "Existing Products") the Supplier shall be responsible for:
- (a) removing all Existing Products at the Delivery Address (as directed by Cygnia) before commencing the installation of the Goods; and
 - (b) unless agreed otherwise between the parties, disposing of the Existing Products in accordance with all Applicable Law.
- 6.3 In removing the Existing Products under clause 6.2(a), the Supplier shall be responsible for making good all damage caused to Cygnia's premises by the removal of the Existing Products.
- 6.4 The Supplier shall install the Goods so as to ensure that the Goods comply with clause 3.1 and in accordance with all relevant Materials.
- 6.5 The Supplier shall carry out all relevant tests to ensure that the Goods function to the Goods Specification and shall, without prejudice to Cygnia's remedies under clause 8, fix all defects as part of the Services, at no additional cost to Cygnia.
- 6.6 Once Cygnia is satisfied that the Goods have passed all tests and that they function to the Goods Specification, Cygnia shall "receipt" the Goods on the Cygnia Oracle system and accordingly the Goods shall be deemed accepted by Cygnia ("**Accepted**").
- 7. MAINTENANCE OF THE GOODS**
- 7.1 Once the Goods have been Accepted in accordance with clause 6.6 the Supplier shall, for the period set out in the associated Services Specification or where no such period is specified, a period of three (3) years from the date on which the Goods are Accepted (the "**Maintenance Period**"), continue to remedy all defects in the Goods and/or any component part in accordance with this clause 7.
- 7.2 If during the Maintenance Period Cygnia finds a defect in the Goods or any component part comprising the Goods, Cygnia shall, as soon as reasonably practicable, give to the Supplier notice in writing of the alleged defects and so far as may be necessary place the Goods at the Supplier's disposal. The Supplier shall as soon as reasonably practicable make good the defects so specified, subject to Cygnia affording the Supplier the necessary access and, where appropriate, permitting any defective materials or component parts to be removed. The Supplier shall, if so required by Cygnia, submit its proposals for making good any defect to Cygnia for its approval.
- 7.3 The Supplier shall bear its own cost of making good any defects under this clause 7, including all costs for, materials, machinery, tools, parts and labour.
- 7.4 Cygnia may require the Supplier to repeat any appropriate tests or checks following the making good of any defect for the purpose of establishing that the defect has indeed been made good and that the Goods now function in accordance with the Goods Specification.
- 7.5 If:
- (a) Cygnia reasonably requires that any defect notified to the Supplier under clause 7.1 be made good urgently and the Supplier is unable to comply or refuses to make good any such defect; or
 - (b) the Supplier neglects or refuses to make good any defect for which it is responsible under this clause 7,
- Cygnia may, without prejudice to any other remedies or relief available to it under the Agreement, proceed to do the work, or appoint a third party to do the work, in such a manner as Cygnia deems reasonable and the Supplier shall reimburse Cygnia for all costs incurred by Cygnia in doing so.
- 7.6 For the avoidance of doubt, the Supplier's obligations under this clause 7 shall continue following the expiry of the Maintenance Period if Cygnia has notified the Supplier of a defect within the Maintenance Period but the maintenance work to remedy the defect has not yet been carried out and/or completed by the Supplier.

8. CYGNIA'S REMEDIES

8.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date, Cygnia shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or Delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by Cygnia in obtaining substitute goods and/or services from a third party provided such goods and services shall be of a recognised comparable quality to those Goods supplied by the Supplier under the relevant Purchase Order;
- (d) where Cygnia has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred and substantiated by Cygnia which are in any way attributable to the Supplier's failure to meet such dates provided that Cygnia has mitigated any loss suffered and claimed under this clause 8.1(e).

8.2 If the Supplier has delivered Goods that do not comply with the warranties set out in clause 3.1, then, without limiting its other rights or remedies, Cygnia shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) 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;
- (b) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by Cygnia in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred and substantiated by Cygnia arising from the Supplier's failure to supply Goods in accordance with clause 3.1 provided that Cygnia has used its reasonable endeavours to mitigate the loss suffered and claimed under this clause 8.2(f).

8.3 If the Supplier fails to perform any of the Services in accordance with the Agreement then, without limiting its other rights or remedies, Cygnia shall have one or more of the following rights:

- (a) where such deficiency or non-compliance arises within the defects liability period set out in the Services Specification, or where no such period is specified twelve (12) months from the date of performance of the Services, require the Supplier at its own cost to:
 - (i) re-perform the Services; and/or
 - (ii) remedy any deficiency in the Services or Materials or non-compliance with the Agreement as soon as possible and in any event within ten (10) Days;
- (b) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (c) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (d) to recover from the Supplier any expenditure incurred by Cygnia in obtaining substitute services from a third party; and

- (e) to claim damages for any additional costs, loss or expenses incurred and substantiated by Cygnia which are in any way attributable to the Supplier's failure to perform the Services in accordance with the Agreement.

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

8.5 Cygnia's rights under the Agreement are in addition to its rights and remedies implied by statute and common law.

9. CYGNIA'S OBLIGATIONS

9.1 Cygnia shall:

- (a) provide the Supplier with reasonable access at reasonable times to Cygnia's premises for the purpose of delivering Goods or providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Goods or Services and Cygnia considers reasonably necessary for the purpose of delivering the Goods or providing the Services.

10. INTELLECTUAL PROPERTY

10.1 The Supplier may not use any intellectual property (including trademarks and logos) belonging to Cygnia or third party customers or clients of Cygnia ("**Cygnia/Third Party IP**") in the Materials or otherwise in relation to the Goods and/or Services without the prior written receipt from Cygnia of confirmation that it or such third party has consented to Supplier's proposed use of Cygnia/Third Party IP.

10.2 In respect of the Goods and any goods that are transferred to Cygnia as part of the Services under the Agreement, including the Materials or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Cygnia, it will have full and unrestricted rights to sell and transfer all such items to Cygnia.

10.3 The Supplier assigns to Cygnia, with full title guarantee and free from all third party rights, all Intellectual Property Rights arising in the performance of the Services (including the Materials) ("**Arising IP**").

10.4 The Supplier shall obtain waivers of all moral rights in the Arising IP to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10.5 The Supplier shall, promptly at Cygnia's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Cygnia may from time to time require for the purpose of securing for Cygnia the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to Cygnia in accordance with clause 10.3.

10.6 The Supplier acknowledges that Cygnia's Confidential Information includes the Materials and the Arising IP.

11. LIABILITY AND INSURANCE

11.1 The Supplier shall indemnify and hold harmless Cygnia in full and on demand from and against all Losses (whether or not such Losses were foreseeable or foreseen) awarded against, or incurred or paid by, Cygnia as a result of or in connection with:

- (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods and/or Services; or
- (b) any claim made against Cygnia in respect of any liability, loss, damage, injury, cost or expense sustained by Cygnia's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Goods as a consequence of a breach or negligent performance or failure or delay in

- performance by the Supplier, its employees, agents or sub-contractors;
- (c) any breach or failure to comply with clause 17; or
- (d) any breach of any warranty given by the Supplier in relation to the Goods or Services under the Agreement.
- 11.2 Nothing in the Agreement or any Purchase Order shall be construed as restricting or excluding either party's liability for:
- (a) death or personal injury resulting from either party's negligence or that of its employees, agent or sub-contractors;
- (b) fraud or fraudulent misrepresentation by it or its employees; or
- (c) any other act or omission, liability for which may not be limited under Applicable Law.
- 11.3 Subject to clause 11.2 above, Cygnia shall not in any circumstances be liable to the Supplier under or in connection with the Agreement for:
- (a) any indirect, special or consequential loss;
- (b) pure economic loss or damage; or
- (c) any:
- (i) loss of profits;
- (ii) loss of business opportunities;
- (iii) loss of revenue;
- (iv) loss of anticipated profits; or
- (v) damage to goodwill
- (in each case arising as a direct or indirect result of the applicable claim).
- 11.4 Subject to clauses 11.2 and 11.3 above, Cygnia's obligation to pay the Price for Goods and/or Services properly delivered or performed in accordance with the Agreement shall constitute Cygnia's sole liability under the Agreement.
- 11.5 Notwithstanding the provisions of this clause 11, the Supplier shall at all times effect and maintain insurance cover sufficient for and appropriate to its obligations under the Agreement and each Purchase Order and shall upon request produce to Cygnia evidence of such cover.
- 12. ACCESS AND SECURITY**
- 12.1 Cygnia reserves the right under the Agreement to refuse to admit to, or withdraw permission to remain on, any premises occupied by or on behalf of Cygnia:
- (a) any member of the Supplier Personnel; or
- (b) any person employed or engaged by a sub-contractor, agent or servant of the Supplier, whose admission or continued presence would be, in the reasonable opinion of Cygnia, undesirable.
- 12.2 When the Supplier is carrying out any installation, commissioning, repair, servicing or other works in relation to the Goods or is performing the Services at any Delivery Address the Supplier shall observe, and shall ensure that Supplier Personnel observe and comply with Cygnia's Policies together with any and all further reasonable instructions or warnings given by Cygnia orally or in writing from time to time. It shall be the Supplier's obligation to require and obtain details of Cygnia Policies and to make the same known to the Supplier Personnel.
- 13. PRICE AND PAYMENT**
- 13.1 In consideration of the provision of the Services and/or Goods by the Supplier, Cygnia shall pay the Price.
- 13.2 Unless otherwise expressly set out in the Agreement the obligation to pay the Price shall constitute Cygnia's entire payment obligation for the performance of the Supplier's obligations.
- 13.3 The Supplier shall invoice Cygnia for the Goods and/or Services within thirty (30) days of Cygnia accepting the relevant Goods and/or Services. Each invoice shall specify the Purchase Order number, the Supplier's VAT registration number and any additional information provided for in these Conditions and/or the Purchase Order. Any invoice which does not comply with these requirements shall be deemed to have been incorrectly submitted and shall not be payable.
- 13.4 Cygnia shall, unless it is subject to a genuine dispute, pay correctly issued invoices within sixty (60) days of Cygnia's receipt of the invoice.
- 13.5 The Price is inclusive of the cost of packaging, insurance and carriage and unless agreed otherwise, is inclusive of all taxes, charges, duties and levies other than UK value added tax ("**VAT**") which Cygnia shall pay in addition to the Price at the rate and in the manner prescribed by Applicable Law from time to time subject to receipt of a valid VAT invoice.
- 13.6 If Cygnia disputes the whole or any part of an invoice it may withhold payment of that invoice, provided that:
- (a) it gives notice in writing to the Supplier of any intention to withhold payment; and
- (b) allows the Supplier the right to reissue an amended invoice for the undisputed amount; and
- (c) specifies the amount to be withheld and the grounds for withholding payment.
- 13.7 The parties shall negotiate in good faith to attempt to resolve the dispute promptly, The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice. If the parties have not resolved the dispute within thirty (30) days of Cygnia giving notice to the Supplier, the dispute shall be resolved in accordance with clause 23.1. Cygnia shall pay the reissued amended invoice on the due date as set out in clause 13.4. The Supplier's obligations to supply the Goods and Services shall not be affected by any payment dispute.
- 13.8 Except where Cygnia withholds an amount due to a bona fide dispute pursuant to clause 13.6 and 13.7, the Supplier shall be entitled to charge simple interest on undisputed overdue sums at the rate of 2% per annum above the base lending rate for the time being of Barclays Bank plc from the day after the due date for payment until receipt of payment in full. The parties agree that the Supplier's right to claim interest under this clause 13.8 shall be a substantial remedy for late payment of undisputed invoices. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from fourteen (14) Days after the dispute is resolved until payment.
- 13.9 Cygnia may at any time, without notice to the Supplier, set off any liability of the Supplier to Cygnia against any liability of Cygnia to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement.
- 14. RIGHT TO AUDIT**
- 14.1 The Supplier shall allow Cygnia, and any auditors of or other advisers to Cygnia, to access any of the Supplier's premises, systems, personnel and relevant records as may be reasonably required in order to:
- (a) fulfil any legally enforceable request by any regulator;
- (b) undertake verifications of the accuracy of any of the Supplier's invoices or identify suspected fraud; and/or
- (c) undertake verification that the Goods and Services are being provided and all obligations of the Supplier are being performed in accordance with the Agreement.
- 14.2 Subject to Cygnia's obligations of confidentiality, the
- 14.3 Supplier shall provide Cygnia (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 14.4 Cygnia shall provide at least three (3) Days' notice of its intention to conduct an audit, unless such audit is conducted in respect of a suspected fraud or required by Cygnia's regulator, in which event no notice shall be required.
- 14.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 14, unless the audit identifies a material breach of the Agreement by the Supplier, in which case the Supplier shall reimburse Cygnia for all its reasonable costs incurred in the course of the audit. For the purpose of this clause 14.5, material breach shall also include if the audit identifies that Cygnia has overpaid any charges under the Agreement or a Purchase Order by five percent (5%) or more.

- 14.6 If an audit identifies that:
- (a) the Supplier has failed to perform any of its obligations under the Agreement, the Supplier shall provide a Remediation Plan to Cygnia within the timescale requested by Cygnia. Once approved by Cygnia, the Supplier shall implement such Remediation Plan in accordance with the timetable specified in the Remediation Plan, at no additional cost to Cygnia; and/or
 - (b) Cygnia has overpaid any charges under the Agreement or a Purchase Order, the Supplier shall pay to Cygnia the amount overpaid within fourteen (14) days from the date of receipt of an invoice or notice to do so.
- 14.7 For the purpose of this clause 14, "**Remediation Plan**" shall mean a plan that the Supplier shall provide to Cygnia in the event of a failure by the Supplier to comply with its obligations under the Agreement, which plan details the Supplier's proposed actions to mitigate and remedy such failure and the timescales for achieving such remedy.
- 14.8 This clause 14 shall continue in full force and effect for twelve (12) months following the expiry or termination of these Conditions or, if later, the last Purchase Order.
- 15. CONFIDENTIALITY**
- 15.1 Subject to clause 15.2, each party (the "**Recipient**") shall during the Term and for a period of five (5) years following expiry or termination the Agreement, keep the other party's (the "**Discloser's**") confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group ("**Confidential Information**") confidential and:
- (a) use such Confidential Information solely for the performance of its obligations under these Conditions and each Purchase Order; and
 - (b) keep such Confidential Information strictly confidential and not, without the Discloser's prior written consent, disclose it to any other person.
- 15.2 The provisions of clause 15.1 shall not apply to any Confidential Information that:
- (a) is already in the public domain or comes into the public domain in the same or substantially the same form in which it has been disclosed in connection with the Agreement or a Purchase Order without breach of the Agreement or that Purchase Order; or
 - (b) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required),
- provided that a particular disclosed or discovered use, combination, analysis, form or collection of information will not be in the public domain simply because it could be re-created using information in the public domain.
- 15.3 The Recipient shall give the Discloser as much notice of any disclosure required under clause 15.2(b) as is reasonable and lawful in the circumstances (if any) and shall provide reasonable assistance to the Discloser in avoiding or limiting the required disclosure.
- 16. PUBLICITY**
- 16.1 The Supplier shall not use the Cygnia's name as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material without the Cygnia's prior written consent.
- 17. DATA PROTECTION**
- 17.1 If, in the performance or management of the Services, the Supplier is required to process personal data as Cygnia's data processor the Supplier shall:
- (a) process the personal data on behalf of Cygnia, only for the purposes of performing the Services and only in accordance with instructions received from Cygnia, or a parent, subsidiary or affiliate of Cygnia from time to time;
 - (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised in writing by Cygnia;
- (c) at all times comply with the provisions of GDPR and, in doing so, implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be described to Cygnia in writing within 2 (two) weeks of the measures being deployed or changed;
 - (d) require written approval by Cygnia of the measures described under 17.1(c);
 - (e) take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data;
 - (f) obtain prior written consent from Cygnia before transferring Personal Data to any sub-contractors in connection with the Agreement;
 - (g) ensure that only those Supplier employees who need to have access to the Personal Data are granted access to such Personal Data and only for the purposes of the performance of the Agreement and that all of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and are subject to binding obligations, within a contract of employment or otherwise, in respect of maintaining the confidential nature of the Personal Data;
 - (h) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject, as defined in the GDPR, itself) unless directed to do so in writing by Cygnia;
 - (i) notify Cygnia immediately and additionally in writing within 24 hours, in the event that you become aware of any breach of either the GDPR legislation or this addendum, whether by you or any of your sub-contractors or sub-processors in connection with the Agreement;
 - (j) notify Cygnia in writing (within five days) if Supplier receives:
 - i) a request from a Data Subject to have access to that person's Personal Data; or
 - ii) a complaint or request relating to either Cygnia's or your obligations under GDPR; or
 - iii) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this agreement;
 - (k) provide Cygnia with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
 - i) providing Cygnia with full details of the complaint or request;
 - ii) complying with a data access request within the relevant timescales set out in the GDPR but strictly in accordance with Cygnia's instructions;
 - iii) providing Cygnia with any Personal Data it holds in relation to a Data Subject making a complaint or request within the timescales required by Cygnia; and
 - iv) providing Cygnia with such other information, access and assistance as Cygnia may require in respect of relevant Personal Data;
 - (l) permit Cygnia or its authorised representatives to inspect and audit the Supplier's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable requests or directions by Cygnia to enable Cygnia to verify and procure that the Supplier is in full compliance with its

	obligations in respect of Personal Data relevant to the Agreement; and		
(m)	not transfer Personal Data outside the European Economic Area ("EEA") without the prior written consent of Cygnia and only upon such conditions as Cygnia may stipulate in order to ensure that any such transfer to which Cygnia consents complies with the GDPR in all respects.		
17.2	The Supplier shall, at all times during the Term, indemnify Cygnia and keep Cygnia indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Cygnia arising from any breach of the Supplier's obligations in respect of data processing under the Agreement.	20.1	20. CONSEQUENCES OF TERMINATION
17.3	For the purpose of this clause 17 the terms "Personal Data" means any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier; "GDPR" means the General Data Protection Regulations (Regulation (EU) 2016/679); and "Data Controller" and "Data Processor" have the meanings ascribed to them within the GDPR or any subsequent legislation as in force from time to time.	20.2	Save as provided in this clause 20, each party's rights, liabilities and obligations under the Agreement shall cease upon its termination or expiry.
18. ETHICS		20.3	Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
18.1	The Supplier shall:		On termination or expiry of the Agreement, each party shall promptly:
	(a) comply with all Applicable Law relating to anti-bribery and anti-slavery including the Bribery Act 2010 and the Modern Slavery Act 2015 (" Relevant Requirements ");		(a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply of the Goods or Services under the Agreement;
	(b) comply with the Cygnia Policies relating to anti-bribery and anti-slavery and enforce them where appropriate (" Relevant Policies "); and		(b) return to the other party or (at the other party's option) destroy all documents and materials (and any copies) containing the other party's Confidential Information;
	(c) ensure that the Goods, Services and Materials are provided in accordance with good ethical trading practices and standards.		(c) erase all the other party's Confidential Information from its computer systems (to the extent reasonably possible); and
18.2	The Supplier shall ensure that any person associated with the Supplier who performs services or supplies goods in connection with the Agreement and each Purchase Order does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 18 (" Relevant Terms "). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Cygnia for any breach by such person of any of the Relevant Terms.		(d) on request, certify in writing to the other party that it has complied with the requirements of this clause 20.3.
18.3	For the purpose of this clause 18:	20.4	Upon expiry or termination of the Agreement the Supplier shall:
	(a) a person associated with the Supplier includes the Supplier's employees (whether or not they are Supplier Personnel) and any of the Supplier's sub-contractors.		(a) make available to Cygnia free of charge all information and documentation required to facilitate the handover of the Services to Cygnia or a Replacement Supplier;
19. TERM AND TERMINATION			(b) make available to Cygnia such of the Supplier Personnel as Cygnia may reasonably require to ensure a satisfactory handover of the Services to Cygnia or a Replacement Supplier (for which the parties will agree charges if appropriate) and;
19.1	The Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the Agreement shall continue until the performance of the Services or delivery of the Goods in accordance with the relevant Purchase Order or the end of the period given in the Purchase Order (subject to any provisions in the Purchase Order for extension or renewal of the Purchase Order), whichever is the later.	20.5	(c) comply with any Exit Management Plan.
19.2	Cygnia shall be entitled to terminate the Agreement by giving sixty (60) Days' notice to the Supplier at any time, in which event Cygnia shall have no liability to the Supplier in respect of any costs or investment incurred in preparation for performance of the agreement, or any stock of the Goods held by the Supplier, other than stock in respect of which Cygnia have issued a valid Purchase Order.		Upon expiry or termination of the Agreement for any reason, clauses that expressly or by implication survive termination shall continue in full force and effect including clauses 11 (<i>Liability and Indemnities</i>), 14 (<i>Right to Audit</i>), 15 (<i>Confidentiality</i>), 17 (<i>Data Protection</i>), 20 (<i>Consequences of Termination</i>), 21 (<i>TUPE</i>), and 27.7 (<i>General</i>).
19.3	Either party may terminate this Agreement immediately by written notice to the other if that other goes into liquidation, either voluntary or compulsory, or if a receiver or administrative receiver or administrator is appointed in relation to that party's affairs and business	21. TUPE	
19.4	Either party may terminate this Agreement immediately by written notice to the other if the other commits a material	21.1	In the event that the Transfer Regulations are deemed to apply in relation to the Agreement upon the Commencement Date or upon the termination of the Agreement, the Supplier shall indemnify and keep indemnified Cygnia against all Losses which arise out of or in connection with the transfer to or from Cygnia of any employees pursuant to such Transfer Regulations.
		22. FORCE MAJEURE	
		22.1	Neither party shall be in breach of the Agreement nor liable for failure or delay in performing any of its obligations under the Agreement if it is prevented from doing so by an event beyond that party's reasonable control and which that party is unable reasonably to prevent or avoid, including fire, flood, failures or interruptions of electricity supplies or acts of local or central government or other authorities (" Events of Force Majeure ") provided that if an Event of Force Majeure prevents a party from performing its obligations for a continuous period in excess of thirty (30) Days, the unaffected party shall be entitled, by giving notice in writing to the other, to terminate the Agreement without prejudice to any accrued rights of either party.

<p>23. MANAGEMENT AND REPORTING 23.1 Each party shall nominate Representatives to deal with the management of the Agreement and each Purchase Order.</p> <p>24. NOTICES Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered to its registered office by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).</p> <p>25. THIRD PARTY RIGHTS 25.1 No person or organisation that is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Agreement.</p> <p>26. NON-SOLICITATION 26.1 The Supplier shall not either on its own account or in partnership or association with any person, whether directly or indirectly, during the term of the Agreement and for a period of six (6) months following its termination or expiry, solicit or entice away any employee of Cygnia engaged in the provision or receipt of the Goods and/or Services or attempt or authorise such action. 26.2 Employment as a result of a bona fide general recruitment campaign or advertisement shall not be a breach of the provisions of this clause 26.</p> <p>27. GENERAL 27.1 The Agreement is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations thereunder without the prior written consent of Cygnia. If Cygnia consents to any such assignment, transfer or sub-contractor, the Supplier shall remain responsible to Cygnia for the due and proper</p>	<p>performance of the agreement by such assignee, transferee or sub-contractor.</p> <p>27.2 In the event of a dispute which remains unresolved within fourteen days of arising the parties shall, attempt to settle such dispute in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.</p> <p>27.3 No variation to the Agreement unless stated otherwise shall have effect unless agreed by both parties in writing.</p> <p>27.4 If any clause of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant clause shall be deemed deleted. Any modification to or deletion of a clause under this clause shall not affect the validity and enforceability of the rest of the Agreement or the Purchase Order.</p> <p>27.5 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 or prevent or restrict the further exercise 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.</p> <p>27.6 The Agreement sets out the entire understanding between the parties and there are no representations, promises, terms or conditions or obligations, oral or written, expressed or implied, relating to its subject matter other than those contained or referred to herein.</p> <p>27.7 The Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.</p>
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