

VISTRA – STANDARD TERMS OF PURCHASE

1. INTERPRETATION

1.1 Definitions.

1.1.1 In these Terms, the following definitions apply:

- (a) "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London, UK are open for business.
- (b) "**Customer**" means the VISTRA legal entity as specified in the applicable Purchase Order submitted by the Customer to the Supplier (registered in the country as specified in the same applicable Purchase Order).
- (c) "**Goods**" means the goods (or any part of them) to be provided by the Supplier to the Customer, as described in the Purchase Order.
- (d) "**Intellectual Property Rights**" 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.
- (e) "**Purchase Order**" means the Customer's order for the Goods and/or Services to be provided by the Supplier (and any other specific terms which may be applicable to the Contract), as set out in the Customer's purchase order form duly signed by an authorised representative of the Customer.
- (f) "**Services**" means the services to be provided by the Supplier to the Customer, as set out in the Purchase Order.
- (g) "**Specification**" means any specification for the Goods and/or Services (including any related plans and drawings) that is agreed in writing by the Customer and the Supplier.
- (h) "**Supplier**" means the person or firm from whom the Customer purchases the Goods and/or Services, as described in the Purchase Order.
- (i) "**Terms**" means the terms and conditions set out in these Terms of Purchase, as may be amended from time to time in accordance with clause 19.8.

2. **BASIS OF CONTRACT**

- 2.1 These Terms govern the agreement in accordance with which the Customer has agreed to purchase Goods and Services from the Supplier, together with Purchase Order ("the Contract").
- 2.2 These Terms are the only terms and conditions upon which the Customer is prepared to deal with the Supplier and these Terms shall apply to the entire exclusion of any other terms that the Supplier may seek to impose or incorporate (whether issued before or after these Terms), or which are implied by trade, custom, practice or course of dealing.
- 2.3 Where it is agreed that the Supplier shall supply Goods and/or Services to the Customer, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order.
- 2.4 The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with the Contract. For the avoidance of doubt, any other form of written communication to the Supplier from the Customer does not constitute an applicable and valid commitment to purchase Goods and/or Services unless a Purchase Order has been submitted to the Supplier in accordance with these Terms.
- 2.5 The Purchase Order shall be deemed to be accepted on the earlier of (a) the Supplier issuing a written acceptance of the Purchase Order; or (b) the Supplier doing any act consistent with fulfilling the Purchase Order or (c) the Supplier receiving the Purchase Order by means of post or email from the Customer and not raising any queries on the same within 2 Business Days.
- 2.6 All Purchase Orders shall be subject to the Contract, unless the Customer and the Supplier expressly agreed otherwise in writing. No assurances given in terms discussed before an order or arising from previous transactions shall take effect as part of any Purchase Order or as a collateral warranty or contract nor shall they bind the Customer in any other way unless repeated in the Contract.

3. **SUPPLY OF GOODS AND SERVICES**

- 3.1 The Supplier warrants to the Customer to:
- 3.1.1 supply the Goods and/or Services to the Customer in accordance with any applicable Specification;
 - 3.1.2 co-operate with the Customer in all matters relating to the Goods and/or Services, and comply with all instructions of the Customer;
 - 3.1.3 provide the Services using all reasonable care and skill;
 - 3.1.4 provide Goods and/or Services of satisfactory quality, which are fit for any purpose for which they are required;
 - 3.1.5 use all reasonable endeavours to meet any performance dates for the Goods and/or Services specified in the Purchase Order or as agreed in writing between the Supplier and the Customer from time to time;
 - 3.1.6 provide Goods which are free from defects in design, material and workmanship and remain so for 12 months after delivery;

3.1.7 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 Contract; and

3.1.8 have and at all times maintain all necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract, and comply with all applicable laws and regulations; and

4. DELIVERY

4.1 The Supplier shall deliver the Goods:

4.1.1 on the delivery date specified in the Purchase Order, or, if no such delivery date is specified, within 28 days of the date of the Purchase Order unless otherwise mutually agreed in writing between the Supplier and Customer;

4.1.2 to the Customer's premises at the address shown within the header of the Purchase Order or such other location as is set out in the Purchase Order, or as instructed by the Customer prior to delivery ("**Delivery Location**"); and

4.1.3 during the Customer's normal business hours, or as otherwise instructed by the Customer.

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

4.3 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately upon obtaining prior written consent by the Customer. In such circumstances however, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.

4.4 In the event any delivery pursuant to a Purchase Order is less than 95% of the quantity of Goods ordered, the Customer shall be entitled at its sole discretion to accept or reject the Goods delivered and to cancel or vary the balance of the Purchase Order. If the Supplier delivers more than 105% of the quantity of Goods ordered, the Customer shall be entitled at its sole discretion to reject the Goods and/or the excess Goods. The Customer may at its sole discretion return Goods supplied otherwise than in accordance with the Purchase Order or any instructions given by the Customer to the Supplier at the Supplier's risk and expense.

4.5 Time is of the essence and in the event of failure to deliver the Goods and/or perform the Services at the locations and times so specified the Customer shall, without prejudice to any other right or remedy the Customer may have, be entitled to cancel the Contract in whole or in part at its sole discretion without liability to the Supplier, to purchase substitute Goods and/or Services from another source, and to recover all additional costs incurred in connection therewith from the Supplier

4.6 The Supplier shall notify the Customer as soon as it becomes aware that it may be unable to meet any time for delivery of the Goods or supply of the Services and at the same time advise the Customer of the earliest possible date that can be met. Such advice shall not prejudice the Customer's aforesaid rights of cancellation and substitution.

5. **CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

- 5.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises and Delivery Location for the purpose of supplying the Goods and/or Services; and
- 5.1.2 provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of supplying the Goods and/or Services.

6. **REMEDIES**

6.1 If the Supplier fails to perform the Services and/or if the Goods are not delivered on the date they are due, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies:

- 6.1.1 suspend or terminate any or all existing and future contracts with the Supplier for the supply of Goods and/or Services;
- 6.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.1.4 to refuse to accept any subsequent supply of any Goods and/or Services which the Supplier attempts to make;
- 6.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party; and
- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 The Contract shall apply to any substituted or remedial Goods and/or Services supplied by the Supplier.

6.3 The Customer's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.

7. **TITLE AND RISK**

7.1 The Supplier warrants that it has good title to the Goods and that it will transfer such title as it may have in the goods to the Buyer pursuant to Clause 7.2.

7.2 Title and risk in the Goods shall pass to the Customer on completion of delivery to the Delivery Location.

8. **PRICE AND PAYMENT**

- 8.1 The price payable for the Goods and/or Services shall be the price set out in the Purchase Order. Any change in Price after the date of the Purchase Order must be agreed in writing and signed by an applicable authorised signatory of the Customer.
- 8.2 The price shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services.
- 8.3 The price of the Goods and/or Services is exclusive of amounts in respect of locally applicable sales tax, but includes the costs of packaging, insurance and carriage of the Goods and/or Services. No extra charges shall be effective unless agreed in writing and signed by an authorised signatory of the Customer.
- 8.4 The Supplier shall invoice the Customer on or at any time after completion of the supply of the Goods and/or Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number and the Customer's correct legal entity name as specified in the header of the Purchase Order.
- 8.5 The Customer shall endeavour to pay correctly rendered invoices within 60 Business Days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier or as specified on the Suppliers invoice.
- 8.6 The Customer shall, on receipt of a valid invoice (including locally applicable sales tax) from the Supplier, pay to the Supplier such additional amounts in respect of locally applicable sales tax as are chargeable on the supply of the Goods and/or Services.
- 8.7 No interest shall be payable by the Customer to the Supplier in relation to any Purchase Order in any circumstances.
- 8.8 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

9. **INDEMNITIES**

- 9.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, claims, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer arising out of or in connection with the Supplier's negligence, default or breach of these Terms
- 9.2 This indemnity shall cover (but is not limited to) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods and/or Services. The indemnity shall apply whether or not the Customer may have been negligent or at fault and does not limit any further compensation rights of the Customer. The Supplier shall also expressly indemnify the Customer against any loss, claim or costs incurred for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, supply or use of the Goods and/or Services.
- 9.3 The Customer shall have no liability to the Supplier for direct or indirect economic loss (including, without limitation, loss of profit, future revenue, anticipated savings, goodwill or reputation), or for any indirect liability, arising from its negligence, breach of contract or statutory duty or otherwise howsoever arising.

9.4 Nothing in these Terms or any Purchase Order shall exclude liability for death or personal injury arising from a party's negligence, or for fraudulent misrepresentation.

9.5 This clause 9 shall survive termination of the Contract.

10. **CUSTOMER PROPERTY**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data that may be supplied by the Customer to the Supplier ("**Customer Property**") and all rights in the Customer Property are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Property in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's prior written instructions or authorisation.

11. **INSURANCE**

11.1 During the term of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such liabilities as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details and limits of cover and the receipt for the current year's premium in respect of each insurance.

12. **INTELLECTUAL PROPERTY**

12.1 In respect of any Goods that are supplied to the Customer under this Contract, 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 the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.

12.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Goods and any products of the Services.

12.3 The Supplier warrants that it has not previously assigned, mortgaged or otherwise dealt in the rights hereby granted or assigned or granted licences of them which would be inconsistent with the Customer's use of the Goods and/or Services.

12.4 The Supplier agrees not to do or permit anything to be done which would prejudice or be inconsistent with any of the Customer's Intellectual Property Rights and where the Supplier uses the Customer's Intellectual Property Rights in relation to the Goods and/or Services it shall only use such Intellectual Property Rights for the supply of Goods and/or Services to the Customer (and not otherwise), and the Supplier shall return all materials relating to or bearing such Intellectual Property Rights (including any copies of them) to the Customer immediately on request and shall comply with the Customer's directions in relation to such Intellectual Property Rights.

13. **CONFIDENTIAL INFORMATION**

13.1 The Customer may request the Supplier sign a separate non-disclosure agreement ("NDA") from time to time. In such circumstances, the confidentiality provisions within this NDA shall form an integral part of the Contract and these Terms. If any conflict arises between the terms of the NDA and the confidentiality provisions contained within these Terms, the terms of the NDA shall prevail.

13.2 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products or its services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential. This clause 13 shall survive termination of the Contract.

14. **DATA PROTECTION**

14.1 The Supplier may collect and hold personal information about the Customer from any source the Supplier considers appropriate for the purposes of supplying the Goods and/or Service to the Customer under the Contract.

14.2 The Supplier shall comply with all applicable laws and regulations in relation to data protection whether in the UK or in any other relevant country.

15. **COMPLIANCE WITH ANTI-BRIBERY LAWS**

15.1 The Supplier irrevocably warrants that:

15.1.1 it has not at any time taken any action, directly or indirectly, in violation of the US Foreign Corrupt Practices Act 1977, as amended, any rules and regulations thereunder, the Bribery Act 2010 and any similar laws or regulations in any other jurisdiction ("**Anti-Bribery Laws**");

15.1.2 it conducts and has at all times conducted its business in compliance with Anti-Bribery Laws; and

15.1.3 it has instituted and maintains policies and procedures designed to ensure, and which the Supplier reasonably believes will continue to ensure, continued compliance by the Supplier with Anti Bribery Laws and to prevent any breach of Anti Bribery Laws by the Supplier.

16. **TERMINATION**

16.1 The Customer may terminate the Contract in whole or in part at any time for any reason by giving the Supplier 30 days written notice, whereupon the Supplier shall discontinue all work related to the Contract.

16.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

16.2.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of receipt of notice in writing of the breach;

16.2.2 the Supplier suffers any bankruptcy or insolvency event (including the appointment of any liquidator, receiver, administrator or similar officer in respect of the Supplier or any of its assets; any resolution is passed, proceedings filed or order made for the liquidation, receivership, administration, bankruptcy, winding-up or dissolution of the Supplier; the Supplier enters into any compromise or arrangement with its creditors; or any analogous event under the laws of any applicable jurisdiction);

- 16.2.3 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 16.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 16.2.5 the Supplier is acquired by or merged with any third party;
- 16.2.6 the Supplier fails to retain requisite authorisation from any applicable manufacturer to supply any Goods and/or Services to its customers.

17. CONSEQUENCES OF TERMINATION

- 17.1 On termination of the Contract for any reason:
 - 17.1.1 the Supplier shall immediately return all Customer Property. If the Supplier fails to do so, then the Customer 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 confidentiality as set-out in Clause 13 of these Terms and will not use them for any purpose not connected with this Contract;
 - 17.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
 - 17.1.3 the Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and
 - 17.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

18. FORCE MAJEURE

- 18.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract.
- 18.2 If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

19. GENERAL

- 19.1 Assignment and subcontracting

19.1.1 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations without the Customer's prior written consent.

19.1.2 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations to any person.

19.2 Notices

19.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid recorded delivery, commercial courier, fax.

19.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.2.1; if sent by pre-paid recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

19.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.3 Severance

19.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

19.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19.4 Waiver

A waiver of any right or remedy under the Contract 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 Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19.5 Third party rights

No third parties shall have rights to enforce any part of the Contract under the Contracts (Rights of Third Parties) Act 1999.

19.6 No partnership

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

19.7 Entire Agreement

The Contract constitutes the entire agreement between the parties. The Supplier acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Customer which is not set out in the Contract.

19.8 Variation

No changes or variations to the Contract, these Terms or any Purchase Order, including the introduction of any additional terms and conditions, shall be effective unless agreed in writing and signed by an authorised signatory of the Customer.

19.9 Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with then or the 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.