

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

Airside Access means access to HMRC and Border Immigration Agency controlled areas of Edinburgh Airport to which vehicular access is through manned control posts;

EAL means Edinburgh Airport Limited, a company registered in Scotland with company number SC096623;

Business Day means a day (other than a Saturday, Sunday or a public holiday in Scotland) when banks in Edinburgh are open for business;

Commencement Date: has the meaning set out in clause 2.2;

Conditions means these terms and conditions as amended from time to time in accordance with clause 14.5;

Contract means the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

Customer means EAL;

Deliverables means all Documents, products, goods and/or materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts);

Delivery Date means the date or dates for delivery of the Goods or performance of the Services, as applicable, as stated in the Purchase Order (if any);

Document includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form (including any electronic form);

Goods means the goods (or any part of them) described in the Purchase Order;

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 losses, liabilities, damages, compensation, awards, payments made under settlement arrangements, claims, proceedings, costs and other expenses including fines, penalties, interest, legal and other professional fees and expenses;

Purchase Order means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form together with attachments to the purchase order form (if any);

Services means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract;

Specification means the specification for the Goods and/or Services notified by the Customer to the Supplier (if any); and

Supplier means the person, firm or other entity from whom the Customer purchases the Goods and/or Services as specified in the Purchase Order.

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);

- (b) a reference to a party includes (unless otherwise excluded by these Conditions) its personal representatives, successors or permitted assigns, employees or agents;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted, and includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted; and
- (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.

2. BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 Unless otherwise agreed by the Customer in writing, the Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:
 - (a) the Supplier issuing written acceptance of the Purchase Order; or
 - (b) any act by the Supplier consistent with commencing work in connection with Purchase Order,
 at which point and on which date the Contract shall come into existence (**Commencement Date**) and the Contract shall continue until the obligations of the Parties are fulfilled unless the Contract has been terminated in accordance with these Conditions.
- 2.3 Subject to clause 2.5 and 14.5 below, these Conditions apply to the Contract 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.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 If an alternative contract has been signed between the Supplier and the Customer for the supply of the Goods and/or the Services (whether or not such contract is referenced in the Purchase Order), the terms of such contract shall apply instead of these Conditions.
- 2.6 In the provision of the Goods and/or the Services, the Supplier shall at all times comply with all applicable laws and regulatory requirements. Furthermore the Supplier shall comply with all applicable notices, directions, rules and regulations that apply at the Customer's premises, including those relating to security, health and safety and operations and any applicable airport byelaws. The Supplier is not permitted to drive any vehicle in an airside area. If the Supplier requires Airside Access it must have a temporary airside security pass and, if it requires vehicular access, use a Customer vehicle. The exception to this is if the Supplier has a full airside security pass and has successfully completed the Customer's airside driver training. In all cases, if the Supplier requires Airside Access, it must have the necessary insurance defined in clause 10.1 (d).
- 2.7 The Supplier warrants that it has in place (and shall ensure that its employees adhere to) its own policies which are not in any material respect less stringent than the EAL Professional Conduct Policy and the EAL Speak Up Serious Concerns Policy, which the Supplier acknowledges it has received. To the extent that the Supplier does not have such policies in place, it shall adhere to (and shall ensure its employees adhere to) the aforementioned EAL policies. Policies can be found at www.edinburghairport.com/policies.

3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods:
 - (a) correspond with their description and any applicable Specification;
 - (b) are 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 the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment; and
 - (c) where applicable, are free from defects in design, materials and workmanship and remain so for 24 months after delivery.
- 3.2 The Customer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings under clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately

take such remedial action as is necessary to ensure compliance (which is subject to the Customer's approval). The Goods shall not have been accepted by the Customer unless and until the Customer intimates as such in writing to the Supplier.

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 ultimate destination following delivery 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; and
- (c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, 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.

4.2 The Supplier shall deliver the Goods:

- (a) on the Delivery Date or, if no such date is specified, then within 14 days of the date of the Purchase Order;
- (b) to the Customer's premises at the location set out in the Purchase Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

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

4.4 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. However, failure by the Supplier to deliver any one instalment on time or at all or any defect or damage in an instalment shall entitle the Customer to the remedies set out in clause 6.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the Commencement Date (or other date set out in the Purchase Order) and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract and shall:

- (a) meet any Delivery Date(s) for the Services;
- (b) co-operate with the Customer and comply with all instructions of the Customer in all matters relating to the Services;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to fulfil the Contract;
- (e) ensure that the Services and Deliverables will conform with the Specification in its entirety, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (f) provide all equipment, tools and such other items as are required to provide the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (h) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**the Customer Materials**, being the exclusive property of the Customer) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (i) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

5.2 The Deliverables shall not have been accepted by the Customer unless and until the Customer intimates as such in writing to the Supplier.

6. CUSTOMER REMEDIES

6.1 If the Supplier:

- (a) fails to deliver the Goods and/or perform the Services (whether by the Delivery Date or at all); or
- (b) has delivered Goods or performed Services that do not comply with the undertakings set out in clause 3.1 or 5.1 (respectively), whether or not the Customer has accepted the Goods,

then, without limiting its other rights or remedies, the Customer shall have the right:

- (i) to terminate the Contract (in whole or part) with immediate effect by giving written notice to the Supplier;
- (ii) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (iii) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered (including if refused by the Customer) by the Supplier, to have such sums refunded by the Supplier;
- (iv) to recover and/or claim damages for any Losses incurred by the Customer which are in any way attributable to the Supplier's breach (as specified under (a) or (b) above), including costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (v) 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; and
- (vi) to require the Supplier, at the Customer's option, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid).

6.2 For the avoidance of doubt, the Customer shall have no obligation to pay the Supplier for any Goods or Services to which Clause 6.1 applies or for any uncompleted or unaccepted Goods or Services.

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

7. CHARGES AND PAYMENT

7.1 The price for the Goods:

- (a) shall be the price set out in the Purchase Order; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.

7.2 The charges for the Services shall be set out in the Purchase Order, and shall be the exclusive remuneration of the Supplier in respect of the performance of the Services and supply of any Goods unless otherwise agreed in writing by the Customer.

7.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery of all Goods unless otherwise agreed in writing. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Customer Purchase Order number.

7.4 For the purposes of clause 7.3, where the Supplier has full access to the Customer's electronic purchasing system (**Purchasing System**), the Supplier shall submit invoices to the Customer via the Purchasing System. Invoices submitted under the Purchasing System must accurately reflect and be correctly aligned to the relevant details set out in the Purchase Order (including in relation to quantity, unit price and amount). Failure to do so may result in such invoice not being due and payable by the Customer. Where the Supplier does not have access to the Purchasing System, the Supplier shall submit invoices to the Customer at the "Bill To" address on the Purchase Order. The Supplier will comply with any reasonable requests from the Customer for duplicate copies of invoices

7.5 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay undisputed invoiced amounts within 60 days of the date of a correctly rendered invoice (provided the invoice is dated on the same day as it is despatched to the Customer) to a bank account nominated in writing by the Supplier.

7.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier

such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 7.7 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of The Royal Bank of Scotland PLC accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.
- 7.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 7.9 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier.

8. INTELLECTUAL PROPERTY RIGHTS & TITLE

- 8.1 In respect of the Goods and any goods and materials that are transferred to the Customer as part of the Services under the Contract (including without limitation the Deliverables or any part of them), the Supplier warrants that it has full clear and unencumbered title to all such items at the date of delivery.
- 8.2 Upon delivery in accordance with clause 4.3, title and risk in the Goods shall pass to the Customer.
- 8.3 On delivery, the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables to the extent they have been developed specifically for this Contract. The Supplier shall obtain waivers of all moral rights in the products of the Services, including the Deliverables, 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.
- 8.4 The Supplier shall promptly do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 8.3.

9. INDEMNITY

The Supplier shall indemnify and keep indemnified the Customer in full against all Losses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, the Services or defects in Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) all losses suffered or incurred by the Company in respect of any breach of professional duty arising from or in connection with the performance or non-performance of the Supplier's obligations under the Contract;
- (c) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors (including any breach of the Data Protection Requirements as defined in clause 11.2); and
- (d) any claim made against the Customer 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.

10. INSURANCE

- 10.1 Unless otherwise agreed in writing with the Customer, the Supplier shall maintain in force for the duration of the Contract the following insurance:
- (a) a third party liability policy with an indemnity limit of at least £5,000,000 for any one occurrence or series of occurrences arising from any one event;
 - (b) in respect of the supply of Goods, a product liability policy with an indemnity limit of at least £5,000,000 for any one occurrence or series of occurrences arising from any one event and in the aggregate in any one year;
 - (c) in respect of the supply of Services, a professional indemnity policy with an indemnity limit of at least £2,000,000 for any one occurrence or series of occurrences arising from any one event and in the aggregate in any one year; and

- (d) In the event that the Supplier needs Airside Access in order to provide the Services, the Supplier shall procure a third party airside liability policy with an indemnity limit of £50,000,000, for any one occurrence or series of occurrences arising from any one event and with a sub-limit of \$50,000,000 for liability for war and terrorism risks, to be maintained for the period of time during which the Supplier requires such Airside Access.

10.2 The Supplier shall, on the request of the Customer, provide the Customer with documentary evidence of insurance cover relating to the policies referred to in clause 10.1 and proof of up to date payment of the premiums for such insurance.

11. CONFIDENTIALITY AND DATA PROTECTION

11.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, business plans, information concerning airport security, commercial arrangements or initiatives which are of a confidential nature and have been 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

11.2 In the performance of its obligations under the Contract, the Supplier shall (and shall procure that its sub-contractors shall) at all times:

- (a) comply with its obligations under the Data Protection Act 1998, Directive 95/46 EC, any other associated legislation or regulations and any applicable codes of practice or other relevant guidance issued by the Information Commissioner's Office (the "**Data Protection Requirements**");
- (b) not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its obligations under the Data Protection Requirements.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Customer may terminate the Contract in part or in whole with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;
- (b) the Supplier stops or suspends (or declares any intention to stop or suspend) its business or payment of its debts or any class of its debts generally or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or otherwise becomes insolvent;
- (c) an administrator, administrative receiver, receiver or manager, liquidator or other similar officer is appointed in respect of the Supplier or the whole or any material part of its assets or undertaking;
- (d) a notice is issued for the purposes of convening a meeting to approve the placing of the Supplier in administration or liquidation, or a petition is presented or an order made for the administration or liquidation of the Supplier or the Supplier otherwise becomes subject to dissolution proceedings;
- (e) a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended), a scheme of arrangement under Part 26 of the Companies Act 2006 or any other arrangement, compromise or composition of the Supplier's debts, or any class of its debts, is proposed or made by or with the Supplier;
- (f) any circumstance arises or event occurs in relation to the Supplier or any of its material assets in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets is subject which correspond with or has an effect equivalent or similar to any of those stated in clause 12.1(b) to clause 12.1 (e) (inclusive);
- (g) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- (h) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;
- (i) there is a change of control of the Supplier, "control" having the meaning set out in section 416 of the Income and Corporation Taxes Act 1988; or
- (j) the Supplier (directly or indirectly) gives or offers to any person employed or engaged by the Customer any gift or consideration of any kind or commits any breach of the Bribery Act 2010.

- 12.2 Without limiting its other rights or remedies, the Customer may terminate the Contract in part or in whole:
- (a) in respect of the supply of Services, by giving the Supplier 2 weeks' written notice; and
 - (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier for all Goods delivered up to the point of termination.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all the Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights and remedies 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; and
- (c) clauses which expressly or by implication have effect after termination (including clauses 9, 10, 11 and 14.9) shall continue in full force and effect.

14. GENERAL

- 14.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- 14.2 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 14.3 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or sent by fax or email.
- 14.4 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9am on the second Business Day after posting or, 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, on the next Business Day after transmission or, if sent by email, when the sender receives a non-automated reply email confirming delivery. This clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.5 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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. Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.
- 14.6 The Customer's rights under the Contract are cumulative and shall be in addition to its rights and remedies implied by statute and common law.
- 14.7 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to minimum the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.8 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of 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.
- 14.9 The Contract, 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 governed by, and construed in accordance with, Scotland law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.