

**TERMS AND CONDITIONS OF PURCHASE**

**1. GENERAL**

1.1. Definitions. In these terms and conditions, the following definitions apply:

“Contract”	means the contract between Maynineteen and the Supplier for the supply of Goods and/or Services in accordance with these terms and conditions;
“Deliverables”	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
“Goods and Services”	the goods and/or services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order;
“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;
“Maynineteen”	means May Nineteen Ltd (company number 04776032) whose registered office is at Unit 11 Empress Business Centre, 380 Chester Road Manchester M16 9EA;
“Order”	Maynineteen's order for the supply of Goods and Services, as set out in Maynineteen's purchase order form;

“Supplier” means the person or firm from whom Maynineteen purchases the Goods and Services.

- 1.2. In these terms and conditions a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## **2. BASIS OF CONTRACT**

- 2.1. These terms and conditions apply to every Order placed by Maynineteen with the Supplier.
- 2.2. The Order provided by Maynineteen to the Supplier constitutes an offer by Maynineteen to purchase the Goods and Services in accordance with these terms and conditions.
- 2.3. The Order shall be deemed to be accepted on the earlier of:
  - 2.3.1. the Supplier issuing written acceptance of the Order; or
  - 2.3.2. any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.4. No terms or conditions in or attached to any catalogue invoice or other sales literature or document or tender or dispatch/delivery advice note of the Supplier which are inconsistent with these terms and conditions or which purport to add to or vary them in any way shall have any effect unless expressly accepted by Maynineteen in writing. Maynineteen may issue additional information or a brief to the Supplier which is to be used in conjunction with this Order and will therefore form part of this Contract.

## **3. PRICE**

- 3.1. Any price for Goods and Services quoted by the Supplier and accepted by Maynineteen as set out in the Order ("the Price") shall not be varied prior to the supply of such Goods and Services and shall be the full and exclusive remuneration of the Supplier in respect of the delivery of the Goods and/or performance of the Services. Any later variation of such price shall not be deemed accepted by Maynineteen unless pre-agreed in writing between the Supplier and Maynineteen.
- 3.2. Unless otherwise agreed in writing by Maynineteen, the Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the delivery of the Goods and/or the performance of the Services.

#### **4. DELIVERY OF GOODS AND PROVISION OF SERVICES**

- 4.1. The Supplier shall meet any delivery and performance dates for the Goods and Services specified in the Order or notified to the Supplier by Maynineteen.
- 4.2. In providing the Services, the Supplier shall:
  - 4.2.1. co-operate with Maynineteen in all matters relating to the Goods and Services, and comply with all instructions of Maynineteen;
  - 4.2.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 4.2.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - 4.2.4. ensure that the Goods and Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Goods and Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Maynineteen;
  - 4.2.5. 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 Maynineteen, will be free from defects in workmanship, installation and design;
  - 4.2.6. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - 4.2.7. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 4.2.8. observe all health and safety rules and regulations and any other security requirements that apply at any premises/venue where the Services are to be performed;
  - 4.2.9. not do or omit to do anything which may cause Maynineteen to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
  - 4.2.10. be responsible for the correction of faulty or incomplete work at its own expense.
- 4.3. Failure to deliver the Goods and Services on the date or dates specified on the Order shall entitle Maynineteen to:
  - 4.3.1. cancel the Order without notice and/or refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

- 4.3.2. recover from the Supplier any costs incurred by Maynineteen in obtaining substitute services from a third party;
  - 4.3.3. where Maynineteen has paid in advance for Good and Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
  - 4.3.4. claim damages for any additional costs, loss or expenses incurred by Maynineteen which are in any way attributable to the Supplier's failure to meet such dates.
- 4.4. These terms and conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.5. Maynineteen's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **5. INVOICES**

- 5.1. Detailed priced invoices shall be sent to Maynineteen upon completion/delivery of the specified Goods and Services and shall bear Maynineteen's order number.
- 5.2. Payment for Goods and Services provided will be made within 30 days from receipt of the Supplier's invoice, provided that Maynineteen is satisfied that the Goods and Services have been performed/delivered satisfactorily and in accordance with these terms and conditions. Maynineteen will inform the Supplier by writing within 7 days of the delivery and/or performance date, if Maynineteen does not consider that the Goods and Services have been performed or delivered satisfactorily or as detailed in the Order.
- 5.3. Maynineteen may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount payable by Maynineteen to the Supplier under the Contract.
- 5.4. If Maynineteen fails to pay any undisputed 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 Bank of England 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 Maynineteen disputes in good faith.

## **6. INTELLECTUAL PROPERTY**

- 6.1. In respect of any Goods that are transferred to Maynineteen under this 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, and that at the date of delivery of such items to Maynineteen, it will have full and unrestricted rights to transfer all such items to Maynineteen.

- 6.2. The Supplier assigns to Maynineteen, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 6.3. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Goods and Deliverables, of the Services 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.
- 6.4. The Supplier shall, promptly at Maynineteen's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Maynineteen may from time to time require for the purpose of securing for Maynineteen the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned Maynineteen in accordance with clause 6.2.
- 6.5. All materials, equipment and tools, drawings, specifications and data supplied by Maynineteen ("Materials") to the Supplier are the exclusive property of Maynineteen.

## **7. ENGAGEMENT OF OTHERS**

The Supplier will be free to engage others considered necessary are subject to prior approval by Maynineteen in writing and must have suitable public liability insurance and professional indemnity insurance in place, where applicable, in accordance with clause 9, evidence of which should be produced to Maynineteen on request.

## **8. LIABILITY FOR TAX AND NATIONAL INSURANCE**

The Supplier will be responsible for all tax and National Insurance liabilities arising from the supply of Goods and Services to Maynineteen.

## **9. INDEMNITY AND INSURANCE**

- 9.1. The Supplier shall keep Maynineteen indemnified in full against all costs, expenses, 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 Maynineteen as a result of or in connection with:
  - 9.1.1. any claim made against Maynineteen by a third party arising out of, or in connection with, the supply of the Goods and 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; and
  - 9.1.2. any claim brought against Maynineteen for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods and Services.

- 9.2. For the duration of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, public liability insurance of £5,000,000 and professional indemnity insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Maynineteen's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.3. This clause 9 shall survive termination of the Contract

## **10. MAYNINETEEN'S OBLIGATIONS**

### **10.1. Maynineteen shall:**

- 10.1.1. provide the Supplier with reasonable access at reasonable times to Maynineteen's or its client's premises for the purpose of delivering the Goods and/or providing the Services;
- 10.1.2. provide such information to the Supplier as the Supplier may reasonably request and which Maynineteen considers reasonably necessary for the purpose of delivering the Goods and/or providing the Services;

## **11. CONFIDENTIALITY**

Maynineteen and the Supplier shall treat all confidential information (including this Contract) as confidential and safeguard it accordingly; and the Supplier shall not disclose any confidential information to any other person without the prior written consent of the Maynineteen.

## **12. TERMINATION**

- 12.1. Without limiting its other rights or remedies, Maynineteen may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 12.1.1. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within ten days of receipt of notice in writing of the breach;
- 12.1.2. becomes or threatens to become subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, becomes or threatens to become subject to any bankruptcy petition or order, has or threatens to have a receiver manager or administrator or administrative receiver appointed over its assets undertakings or income has passed a resolution for its winding-up or has a petition presented to any court for its winding-up or for an administration order or anything analogous to the above occurs in respect of such other party; or
- 12.1.3. ceases or threatens to cease to trade.

### **13. CONSEQUENCES OF TERMINATION**

13.1. On termination of the Contract for any reason:

13.1.1. the Supplier shall immediately deliver to Maynineteen all Deliverables whether or not then complete, and return all Materials. If the Supplier fails to do so, then Maynineteen may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

13.1.2. 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; and

13.1.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### **14. OBSERVANCE OF STATUTORY REQUIREMENTS**

The Supplier shall comply with all statutes, orders, regulations or bye laws applicable to the delivery and/or performance of the Goods and/or Services, including health and safety, and shall indemnify Maynineteen against any losses claims or liabilities expenses proceedings or otherwise as a result of the Supplier's non compliance with the same.

### **15. ASSIGNMENT**

The Supplier shall not assign or transfer any Order or deal in any other manner with all or any of its rights or obligations under the Contract or the benefit thereof to any third party except with the prior written consent of Maynineteen.

### **16. REPEAT ORDERS/BOOKINGS**

16.1. Any agreement by the Supplier to supply further Goods and Services to Maynineteen (whether or not of the same description as goods and services previously supplied) shall be deemed to be made with express notice of Maynineteen's standard conditions of purchase and these shall be deemed to be incorporated in all such contracts whether or not expressly referred to or included.

16.2. The Supplier shall not give out any of their own publicity material to anybody whilst delivering/performing the Goods and Services.

### **17. AMENDMENT**

This Contract may not be varied except by an agreement in writing signed by the duly authorised representatives of the parties. The parties may rescind or vary this Contract without the consent of a third party to whom an express right to enforce any of its terms has been provided.

**18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person or company who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any right under it and the provisions of the Act are expressly excluded.

**19. WAIVER**

No failure or delay by either party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

**20. INVALIDITY**

If any provision of this Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the remainder of this Contract and the remainder of the provision in question shall not be affected.

**21. NO PARTNERSHIP:**

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.

**22. NOTICES**

Any notification by either party to the other under the Contract shall be in writing, and delivered to Maynineteen at its address set out at the start of this Contract. Notice to the Supplier shall be to the contact person and address shown on its invoice.

**23. GOVERNING LAW**

This contract shall be subject to and construed in accordance with English Law and the parties submit to the jurisdiction of the English Courts.