

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

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

Customer: McCarthy & Stone group company set out in the Order.

Deliverables: all documents, Goods and materials developed, manufactured, sourced and/or supplied by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification set out in the Order.

Off-payroll Legislation: the legislation set out in the Amendments to Chapters 10 of Part 2 of the ITEPA 2003

Order: the Customer's order for the supply of Goods or Services as set out overleaf.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier in accordance with the Order.

Service Specification: the description or specification for Services set out in the Order.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 **Construction.** 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 its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (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; and
- (e) a reference to **writing** or **written** includes e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) 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**).

2.3 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 Where the Customer and Supplier have entered into a framework agreement or a different contract for the supply of Goods or Services the terms of that agreement/contract shall supersede the terms herein unless expressly stated otherwise in the Order overleaf.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure 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 the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment; and
- (c) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.3 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 Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

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 Order, the 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 in accordance with the requirements set out in the Order.

4.3 Title and risk in the Goods shall pass to the Customer on delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

5.3 Should the Supplier be providing their Services through a limited company in which they own shares then the Supplier must make the Customer aware of this via the Supplier pre-qualification questionnaire to enable the Customer to meet its responsibilities under the Off-payroll Legislation.

6. CUSTOMER REMEDIES

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

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party; and
- (c) 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 by the Supplier, to have such sums refunded by the Supplier.

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

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

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

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

8. CHARGES AND PAYMENT

8.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; 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.

8.2 The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the end of the month in which a correctly rendered invoice is received to a bank account nominated in writing by the Supplier.

8.4 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**).

8.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

9. INDEMNITY

9.1 The Supplier shall keep the Customer indemnified against all liabilities, direct costs, expenses, damages and losses and all other reasonable professional costs and expenses, suffered or incurred by the Customer as a result of or in connection with:

- (a) 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, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) 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, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance, act or omission or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10. CONFIDENTIALITY

10.1A party (receiving party) shall keep in strict confidence all confidential information (including but not limited to) technical or commercial know-how, specifications, inventions, processes 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

10.2 This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier 1 month's written notice; and
- (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier. The Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

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

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of receipt of notice in writing to do so;
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; and
- (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply, or any other event analogous to the foregoing which in the reasonable opinion of the Customer casts doubt on the Supplier's ability to comply with the Order.

11.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

11.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11.6 On termination for any reason, each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the Goods and/or Services under the Contract;
- (b) return to the other party all documents and materials (and any copies) containing the other party's confidential information;
- (c) erase all the other party's confidential information from its computer systems (to the extent possible).

12. FORCE MAJEURE

12.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

- (a) If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 10 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

13. ANTI-BRIBERY COMPLIANCE

The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the Customer Ethics and Anti-bribery Policy notified to the Supplier from time to time in each case as the Customer or the relevant industry body may update them from time to time

14. MODERN SLAVERY AND HUMAN TRAFFICKING

14.1 The Supplier represents and warrants that at the date of the Contract that neither the Supplier nor any of its officers, employees or other persons associated with it:

- (b) has been convicted of any offence involving slavery and human trafficking; and
- (c) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

14.2 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

15. DATA PROTECTION

15.1 Neither party shall do any act that puts the other party in breach of its obligations set out in this clause and nothing in the Contract shall be deemed to prevent any party from taking the steps it deems necessary to comply with the General Data Protection Regulation (EU) 2016/679 or Data Protection Act 2018 as amended and updated from time to time ("the Data Protection Legislation").

15.2 The Supplier acknowledges that the Customer is the data controller (as defined in the Data Protection Legislation) and places great emphasis on confidentiality, integrity and availability of information and personal data. The Customer alone shall determine the purposes for which and the manner in which personal data are or are to be processed.

15.3 The Supplier shall at all times comply with obligations equivalent to the obligations of a data processor in the Data Protection Legislation and shall not at any time transfer any Customer data including personal data outside of the European Economic Area and shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. When considering what measures are appropriate, the Supplier shall have regard to the state of good practice, technical development and the cost of implementing any measures to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss or destruction, and to the nature of the data to be protected.

16 INTELLECTUAL PROPERTY

- 16.1 In relation to intellectual property rights in the Goods and Services (**IPRs**), the Supplier shall retain ownership of all Supplier IPRs existing on the Commencement Date and the Customer shall retain ownership of all Customer IPRs existing on the Commencement Date.
- 16.2 The Supplier grants the Customer an irrevocable, perpetual, non-exclusive, royalty-free licence to use all existing Supplier IPRs and all new IPRs arising out of the Contract including the right to copy, use and reproduce and sub-licence such IPRs unrestricted, as appropriate and necessary for the supply of Goods and proper performance and full utilisation of the Services under the Contract by the Customer.
- 16.3 Where Goods and/or Services are commissioned by the Customer the Supplier shall, promptly at the Customer's request assign such new IPRs to the Customer and shall do (or procure the doing of) all such further acts and things and execute (or procure 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 any Order, including all rights, title and interest in and to the new IPRs.
- 16.4 The Supplier shall obtain waivers of any moral rights in the new IPRs 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 provision in any jurisdiction. Such waivers shall be in favour of the Customer and its licensees, sub-licensees, assignees and successors in title to the new IPRs.
- 16.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the new IPRs assigned to the Customer for the purpose only of performing its obligations under the Contract. Such licence can be revoked at any time by the Customer.
- 16.6 Neither party shall have or obtain any rights to the other party's IPRs or have the right to use the other party's IPRs, except as assigned or licensed under this clause.

17. DISPUTE RESOLUTION PROCEDURE

- 17.1 If a dispute arises out of or in connection with this framework agreement or the performance, validity or enforceability of it (a "**Dispute**") then the parties shall follow the procedure set out in this clause:
- (a) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Tier 1 escalation parties shall attempt in good faith to resolve the Dispute. The Customer Tier 1 party shall be the relevant Category Manager. The Supplier Tier 1 party shall be notified to Customer within 7 days of the commencement of the supply of the Services;
- (b) if the Tier 1 escalation parties are for any reason unable to resolve the Dispute within 21 days of service of the Dispute Notice, the Dispute shall be referred to the Tier 2 escalation parties who shall attempt in good faith to resolve it. The Customer Tier 2 party shall be a Customer Director. The Supplier Tier 2 party shall be notified to Customer within 7 days of the commencement of the supply of the Services; and
- (c) if the Tier 2 escalation parties are for any reason unable to resolve the Dispute within 21 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 10 days after the date of the ADR notice.
- 17.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to a dispute at any time.

18. GENERAL

- 18.1 Assignment and other dealings, the Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may not at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 Notices.
- (a) 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 first class post or other next working day delivery service, or commercial courier.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2; if sent by pre-paid first class post or other next working day delivery service, 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 e-mail, one Business Day after transmission or on receipt of a read receipt, whichever is the earlier.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.3 Severance. If any provision or part-provision of the Contract 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 provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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.
- 18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.6 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 18.8 Governing law. 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 the law of England and Wales.
- 18.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).