

Terms and Conditions for the Supply of Goods and Services

1 Definitions and Interpretations

1.1 The following definitions shall apply:

Agreement: an agreement between the Customer and the Supplier set out in a Purchase Order for the supply of Goods and/or Services which is subject to these Conditions.

Applicable Law(s): the laws of England and Wales and any regulations, regulatory policies, guidelines or industry codes of practice which apply to the provision of the Goods and Services.

Completion Notice: as defined at Condition 3.1.3.

Conditions: these terms and conditions as amended from time to time.

Confidential Information: all information relating to either party or its group companies which is not publicly available including commercial, financial or technical information, know-how, or business methods.

Contract Period: the duration for the performance of the Services from the date of this Agreement, as stated in the Purchase Order.

Customer: the VIRTUS entity identified at the top of the Purchase Order.

Customer WHS Standards: The Customer's wellbeing, health and safety and security standards and requirements as notified by the Customer to the Supplier from time to time.

Delivery Location: the location at which the Services shall be provided and to which Goods shall be delivered, which shall be the 'ship to' destination as set out in the Purchase Order, unless stated otherwise.

Delivery: as defined at Condition 4.4.

Delivery Date: the date set out in the Purchase Order.

Fees: as defined at Condition 5.1.

Force Majeure Event: any event outside the reasonable control of the relevant party affecting its ability to perform any of its obligations (other than payment) under the Agreement including (but not limited to) acts of God, fire, flood, lightning, war, revolution, act of terrorism, riot, civil commotion, epidemic, strikes, lock outs and industrial action, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.

Goods: the goods as described, and in the quantities, as set out in the Purchase Order.

Goods Specification: the specification for the Goods as set out in the manufacturer's standard documentation or as otherwise set out in, or attached to, the Purchase Order.

Goods Threshold: as defined at clause 4.3.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, rights in designs, rights in computer software, database right, moral rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered, and all similar or equivalent rights or forms of protection in any part of the world.

Purchase Order: the Customer's order for the Goods and/or Services as set out in the Customer's purchase order form issued by VIRTUS.

Services: the services set out in the Purchase Order.

Service Specification: the description of the Services, as stated in the Purchase Order, or attached to the Purchase Order.

Services Threshold: as defined at clause 3.3.

Supplier: the party identified as the supplier in the Purchase Order.

Working Day: Monday to Friday from 08:00 – 17:00 (excluding bank or public holidays in England).

1.2 The words "other", "including" and "in particular" shall not limit the generality of any preceding words.

2 Basis of Contract

2.1 The Purchase Order is an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions and any other written materials or instructions from the Customer relating to the subject matter of such Purchase Order.

2.2 The Purchase Order shall be deemed accepted by the Supplier on the earlier of:

2.2.1 the Supplier issuing a written acceptance of the Purchase Order; or

2.2.2 the Supplier doing any act consistent with fulfilling the Purchase Order,

on which date an Agreement shall come into existence.

2.3 These Conditions shall apply to each Agreement to the exclusion of any other terms which the Supplier seeks to impose.

3 Services

3.1 The Supplier shall:

3.1.1 provide the Services in accordance with the terms of the Agreement and Applicable Laws;

3.1.2 perform the Services using reasonable care and skill;

3.1.3 perform the Services for the Contract Period (where stated) or complete the Services by the Delivery Date (where stated). The Services will be deemed completed when the Customer issues a written notice to the Supplier confirming completion ("**Completion Notice**"). The Supplier shall notify the Customer in writing when the Supplier believes that the Services have been completed. A Completion Notice shall not mean that the Customer has accepted that the Services are in accordance with the Agreement;

3.1.4 co-operate with the Customer in all matters relating to the Services, and comply with the Customer's instructions;

3.1.5 use personnel who have the skills to perform tasks related to the provision of the relevant Services assigned to them;

3.1.6 obtain and maintain all licences and consents required for the provision of the Services;

3.1.7 comply with all health and safety and security requirements that apply at the Delivery Location and Customer WHS Standards;

3.1.8 ensure that the Services conform with the Services Specification; and

3.1.9 comply with the Customer's 'Supplier Code of Conduct' (as updated from time to time) which appears at

<https://virtusdatacentres.com/termsandconditions>.

3.2 If the Services do not comply with Condition 3.1, without prejudice to its other rights or remedies, the Customer may (at its option):

3.2.1 terminate the Agreement with immediate effect and without liability by giving written notice to the Supplier and require the Supplier to promptly provide a full refund of the Fees for the Services (if paid); or

3.2.2 require the Supplier to promptly reperform the Services at the Supplier's cost.

The Customer's right and remedies above shall apply to any remedial Services supplied by the Supplier.

- 3.3 If the Supplier fails to complete the Services by the Delivery Date, without prejudice to the Customer's other rights and remedies, the Supplier shall pay liquidated damages to the Customer for each day of delay, which shall accrue from the next Working Day following the Delivery Date, until the earlier of: (a) the date the Customer issues a Completion Notice, or (b) the date on which the Services Threshold (as defined below) is reached. The liquidated damages payable for each day of delay shall be 0.4% of the Fees for the Services which are delayed, up to a maximum of 10% of the Fees for the Services which are delayed ("**Services Threshold**"). The parties agree that the liquidated damages are a reasonable and proportionate remedy to protect the Customer if the Services are not completed by the Delivery Date. The Supplier shall not be liable to pay liquidated damages to the extent that the delay is due to: (a) any act or omission of the Customer, or (b) any works being carried out at the Delivery Location by the Customer or a third party which prevents the Supplier from supplying the Services. If the Services Threshold is reached and the Supplier has failed to complete the Services, the Customer may terminate the Agreement on providing written notice to the Supplier.
- 3.4 The Customer may refuse to grant access to, or remove, any of the Supplier's personnel from the Delivery Location who breach Condition 3.1.7 and/or present a security threat.

4 Goods

- 4.1 The Supplier warrants that the Goods shall:
- 4.1.1 conform with the Goods Specification;
- 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 4.1.3 be fit for any purpose held out by the Supplier;
- 4.1.4 be free from defects in design, material and workmanship and remain so for at least 12 months after Delivery; and
- 4.1.5 comply with all Applicable Laws.
- 4.2 If the Goods do not comply with any of the warranties at Condition 4.1, without prejudice to its other rights or remedies, the Customer may (at its option):
- 4.2.1 reject the Goods (in whole or in part), return them to the Supplier at the Supplier's risk and expense and require the Supplier to promptly provide a full refund of the rejected Goods (if paid); or
- 4.2.2 require the Supplier to promptly repair or replace the Goods at the Supplier's cost.
- The Customer's rights and remedies above shall apply to any repaired or replacement Goods supplied by the Supplier.
- 4.3 The Supplier shall deliver the Goods to the Delivery Location by the Delivery Date. If the Supplier fails to deliver the Goods by the Delivery Date, without prejudice to the Customer's other rights and remedies, the Supplier shall pay liquidated damages to the Customer for each day of delay, which shall accrue from the next Working Day following the Delivery Date until the earlier of: (a) the date on which the Goods are delivered to the Delivery Location, or (b) the date on which the Goods Threshold (as defined below) is reached. The liquidated damages payable for each day of delay shall be 0.4% of the Fees for the undelivered Goods, up to a maximum of 10% of the Fees for the undelivered Goods ("**Goods Threshold**"). The parties agree that the liquidated

damages are a reasonable and proportionate remedy to protect the Customer if the Goods are not delivered by the Delivery Date. The Supplier shall not be liable to pay liquidated damages to the extent that the failure to deliver the Goods by the Delivery Date is due to any act or omission of the Customer. If the Goods Threshold is reached and the Supplier has failed to deliver the Goods, the Customer may terminate the Agreement on providing written notice to the Supplier.

- 4.4 Where the Delivery Location is located outside of the United Kingdom, Goods shall be delivered DDP (Incoterms 2020).
- 4.5 Delivery of the Goods shall be completed on:
- 4.5.1 the unloading of the Goods at the Delivery Location; or
- 4.5.2 where the Goods require installation, on completion of installation of the Goods and installation will be deemed completed when the Customer issues a written notice to the Supplier confirming completion, ("**Delivery**").
- 4.6 Risk and title in the Goods shall transfer to the Customer on Delivery.
- 4.7 The Supplier shall co-operate with the Customer in all matters relating to the supply and Delivery of the Goods and shall comply with the Customer's reasonable instructions.

5 Fees

- 5.1 The fees for the Goods and Services are set out in the Purchase Order ("**Fees**").
- 5.2 The Fees for the Goods include the costs of packaging, insurance and carriage of the Goods to the Delivery Location.
- 5.3 The Fees are exclusive of VAT and any other applicable tax or duty, which shall be charged at the prevailing rate.

6 Invoicing and Payment

- 6.1 The Supplier shall invoice the Customer:
- 6.1.1 for the Goods on or after Delivery; and
- 6.1.2 for the Services on or after receiving a Completion Notice (or at such other frequency as the Customer has agreed in writing).
- 6.2 The Supplier shall submit all invoices to the Customer in accordance with the instructions set out in the Purchase Order.
- 6.3 Unless agreed otherwise by the parties in a Purchase Order, and notwithstanding a statement within the Purchase Order referring to "Net 30 Days", the Customer shall pay each undisputed invoice submitted to it in accordance with Condition 6.2 within 45 days of receipt of the invoice and supporting documentation (as reasonably required by the Customer including evidence of delivery, certificates, as-built documents, manuals etc) to a bank account nominated in writing by the Supplier.
- 6.4 If the Customer fails to pay any undisputed invoices within fourteen (14) days of the due date, the Supplier may charge interest on the overdue amount on a daily basis (after as well as before judgment) from the due date until payment is made in full at the rate of 3% above the base rate from time to time of The Royal Bank of Scotland Plc.
- 6.5 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future or liquidated or unliquidated.

7 Liability

- 7.1 Nothing in the Agreement excludes or limits:
- 7.1.1 either party's liability for:
- 7.1.1.1 death or personal injury caused by a party's negligence;
- 7.1.1.2 fraud or fraudulent misrepresentation;
- 7.1.1.3 any liability which cannot legally be excluded or limited; or
- 7.1.1.4 breach of Condition 10;
- 7.1.2 the Supplier's liability under any indemnities provided under the Agreement.
- 7.2 Neither party shall be liable for any indirect loss or damage.
- 7.3 Subject to clauses 7.1 and 7.2, each party's total aggregate liability to the other party whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with each Agreement shall be limited to 200% of the Fees paid or payable by the Customer to the Supplier.
- 7.4 The Supplier shall indemnify the Customer in full on demand against all liabilities, costs, expenses, damages and losses (including any reasonable legal and professional costs) incurred by the Customer arising out of or in connection with: (i) any damage to the Delivery Location and/or any claim brought by third parties relating to damage to, or destruction of, its tangible property which in either case is caused by the acts or omissions of the Supplier, its employees, representatives, agents or subcontractors; and (ii) 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 or use of the Services.

8 Insurance

- 8.1 The Supplier shall maintain in force with a reputable insurance company the following insurances to cover the liabilities that may arise under or in connection with an Agreement:
- 8.1.1 professional indemnity insurance if the Supplier is supplying Services;
- 8.1.2 product liability insurance if the Supplier is supplying Goods; and
- 8.1.3 public liability if the Supplier is supplying Goods and/or Services.

9 Termination and Consequences of Termination

- 9.1 Without prejudice to any other right or remedy available to it, either party may terminate the Agreement immediately by giving written notice to the other party and without liability, if the other party:
- 9.1.1 commits a material breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within five (5) Working Days after being notified in writing to do so;
- 9.1.2 enters into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtains a moratorium, is wound up (unless for the purpose of a solvent restructuring), has a receiver appointed to any of its assets or ceases to carry on business; or
- 9.1.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.2 Without prejudice to its other rights or remedies, the Customer may at any time before delivery of the Goods or commencement of the Services, amend or

cancel a Purchase Order (in whole or part) without liability by providing written notice to the Supplier.

- 9.3 Where a Contract Period is stated, the Agreement shall expire automatically at the end of the Contract Period, unless the parties agree otherwise in writing.
- 9.4 The termination or expiry of the Agreement is without prejudice to the rights and remedies either party has accrued up to the date of termination or expiry.
- 9.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.

10 Confidentiality

- 10.1 Subject to Condition 10.2, each party shall, during the Agreement and for two (2) years after termination or expiry of the Agreement, keep confidential the other party's Confidential Information and shall not use nor disclose the same except to perform its obligations or exercise its rights under the Agreement.
- 10.2 Each party may disclose the other party's Confidential Information to an employee, consultant, subcontractor, agent or professional advisor to the extent necessary to perform its obligations or exercise its rights under the Agreement or if necessary to any insurer or funder, provided that such parties are subject to equivalent obligations of this Condition 10. Each party will be responsible for disclosure and/or use of the other party's Confidential Information by such third parties.
- 10.3 The obligations in this Condition 10 do not apply to any Confidential Information which either party can show:
- 10.3.1 is publicly available other than as a result of that party's breach of this Condition 10;
- 10.3.2 was available to it on a non-confidential basis prior to disclosure by the other party;
- 10.3.3 is or becomes available to it on a non-confidential basis from a person who, to a party's knowledge, is not under any confidentiality obligation in respect of that information;
- 10.3.4 is agreed by the parties in writing to not amount to Confidential Information; and/or
- 10.3.5 is required to be disclosed under any Applicable Law, or by court order or governmental body or authority.

11 Compliance

- 11.1 The Supplier shall, and shall ensure that its subcontractors shall, during the term of the Agreement, comply with all Applicable Laws relating to:
- 11.1.1 the environment, including the Environment Act 2021 and the Customer's sustainability policy or statement as notified by the Customer to the Supplier (and as updated from time to time);
- 11.1.2 anti-bribery and anti-corruption. The Supplier undertakes it has not committed any offence under relevant anti-bribery and anti-corruption laws and that it maintains adequate procedures to prevent bribery and corruption;
- 11.1.3 modern slavery. The Supplier undertakes it has not committed any offence under relevant modern slavery laws and that it maintains adequate controls to prevent modern slavery in its supply chain;
- 11.1.4 sanctions; and
- 11.1.5 tax evasion. The Supplier will at all times maintain and implement reasonable Prevention Procedures

- (as defined by the Criminal Finances Act 2017) to prevent the commission of any offence pursuant to that Act.
- 11.2 Upon request in the 12 months following the Delivery Date, the Supplier shall prepare and deliver to the Customer a sustainability report: (i) setting out the steps it has taken to ensure that practices that would result in a breach of Applicable Laws relating to the environment are not taking place in any of its supply chains relevant to the Agreement or in any part of its business relevant to the Agreement, and (ii) confirming that it is complying with the Applicable Laws relating to the environment.
- 11.3 Without prejudice to the foregoing, upon request by the Customer, the Supplier shall provide data related to its scope 1, 2 and 3 emissions which are related to its performance of this Agreement. Such data shall be sufficient to enable the Customer to comply with Applicable Laws.
- 11.4 The Supplier shall notify the Customer in writing on becoming aware of any actual or suspected breach of Condition 11.1. The Customer may terminate immediately upon giving written notice if the Supplier is in breach of Condition 11.1.

12 General

12.1 Intellectual Property

- 12.1.1 All Intellectual Property Rights belonging to each party prior to the date of this Agreement shall remain vested in such party. Where Intellectual Property Rights are created in the provision of the Goods and/or performance of the Services, such Intellectual Property Rights will automatically vest in the Customer on the day of creation and the Supplier assigns all Intellectual Property Rights to the Customer with full title guarantee and free from all encumbrances.

12.2 Assignment, Subcontracting and Other Dealings

- 12.2.1 Subject to Condition 12.2.2, the Supplier shall not assign, novate, transfer or otherwise dispose of any of its rights or obligations under the Agreement to any third party without the Customer's prior written consent.
- 12.2.2 The Supplier may subcontract its obligations under the Agreement without the Customer's prior written consent but shall remain responsible for all acts and omissions of its subcontractors.
- 12.2.3 The Customer may assign, novate, transfer, subcontract or otherwise dispose of any of its rights or obligations under the Agreement to any third party without the Supplier's prior consent.

12.3 Entire Agreement

The Agreement constitutes the entire agreement between the parties.

12.4 Waiver

No failure or delay by either party to exercise any right or remedy provided under the Agreement 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. A waiver of any right or remedy is only effective if given in writing.

12.5 Third Party Rights

A person who is not a party to then Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Agreement.

12.6 Variation

No variation of the Agreement shall be effective unless it is agreed in writing by the parties.

12.7 Notices

- 12.7.1 Any notices given to a party under the Agreement must be in writing and delivered by hand or post to that party's registered office address or by email to the party's email address set out in the Purchase Order.

- 12.7.2 A notice is deemed received: (a) if delivered by hand, when left at the other party's address, (b) if sent by post, at 9.00 am on the second Working Day after posting, and (c) if sent by email, at the time of transmission, provided that the email is sent without any error or out of office message being received by the sender.

12.8 Force Majeure

- 12.8.1 Neither party shall incur any liability to the other as a result of any delay or failure to perform its obligations under the Agreement as a result of a Force Majeure Event.

- 12.8.2 If the Force Majeure Event prevents the Supplier from fulfilling performing its obligations under the Agreement for more than one month, the Customer shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Supplier.

13 Remedies

The Customer's rights and remedies under the Agreement are in addition to any rights and remedies implied by law.

14 Law and Jurisdiction

- 14.1 The Agreement and any disputes arising out of or in connection with it shall be governed by English law.
- 14.2 The English courts have exclusive jurisdiction to settle any disputes arising in connection with an Agreement.