

## Standard Terms and Conditions for Purchase of Goods and/or Services

### 1 Interpretation

- 1.1 Should there be any inconsistency between the provisions of the Order, Terms and Conditions, the Terms and Conditions will take precedence. In the event of any inconsistency of the Terms and Conditions, the conflict should be resolved according to the following descending order of priority: (a) the clauses of the Terms and Conditions, (b) Schedule (Definitions) and (c) the Order.
- 1.2 Any reference to any legislation includes reference to updates or amendments to such legislation.

### 2 Basis of Contract

- 2.1 The Order constitutes an offer by Midland Heart to purchase Goods and/or Services from the Supplier in accordance with this Agreement. The Order shall be deemed to be accepted on the Supplier issuing written acceptance of the Order at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 2.2 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. These Terms and Conditions shall apply to the supply of both Goods and/or Services (as applicable).

### 3 Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall: (a) correspond with their description as set out in the Order; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose stated by the Supplier or made known to the Supplier by Midland Heart; (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, consents that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 3.3 Midland Heart may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
- 3.4 If following such inspection or testing Midland Heart considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, Midland Heart shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

### 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, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Delivery of the Goods will be completed when they are at the delivery location notified by Midland Heart or as specified in the Order.
- 4.3 The Supplier will not deliver the Goods in instalments without Midland Heart's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately to reflect quantities of Goods received by Midland Heart.
- 4.4 Title and risk in the Goods (including Goods delivered in instalments) will pass to Midland Heart on completion of delivery.

## 5 **Supply of Services**

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Agreement supply the Services to Midland Heart in accordance with the terms of the Agreement.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order that Midland Heart notifies to the Supplier.
- 5.3 In providing the Services, the Supplier shall: (a) co-operate with Midland Heart and comply with all Midland Heart's instructions; (b) perform the Services with best care, skill and diligence; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them; (d) ensure that the Services conform with all descriptions set out in the Order and that the Deliverables shall be fit for any purpose; (e) comply with all applicable laws; (f) obtain and at all times maintain all licences and consents which may be required for the provision of the Services; (g) hold all materials, equipment, specifications and data supplied by Midland Heart (**Midland Heart Materials**) in safe custody at its own risk.

## 6 **Midland Heart remedies**

- 6.1 If the Supplier fails to deliver and/or perform the Goods and/or Services by the applicable date or the Goods and/or Services do not comply with clauses 3.1 and/or 5.3, Midland Heart shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies: (a) terminate the Agreement with immediate effect by giving written notice to the Supplier; (b) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; (c) recover from the Supplier any costs incurred by Midland Heart in obtaining substitute goods, services and/or deliverables from a third party; (d) to reject the Goods (in whole or in part) whether or not title has passed and/or return the Deliverables, to the Supplier at the Supplier's own risk and expense; (e) require the Supplier to repair or replace the rejected Goods and/or repeat performance of the Services, or to provide a full refund of the price of the rejected Goods and/or the price paid for the Services; and (f) claim damages for any additional costs, loss or expenses incurred by Midland Heart which are in any way attributable to the Supplier's failure.
- 6.2 These Terms and Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.3 Midland Heart's rights and remedies under the Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 7 **Charges and payment**

- 7.1 The price for the Goods and/or Services shall be set out in the Order and it shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. No extra charges shall be effective unless agreed in writing and signed by Midland Heart.
- 7.2 The Supplier shall invoice Midland Heart as set out in the Order and each invoice shall include supporting information to verify the accuracy of the invoice with a purchase order number.
- 7.3 Midland Heart shall pay the invoiced amounts after verifying that the invoice is valid and undisputed within 30 calendar days of receipt of the invoice. All amounts stated in the Order are exclusive of VAT which shall be charged at the relevant rate.
- 7.4 Midland Heart may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance. The Supplier will not be entitled to assert any credit, set-off or counterclaim against Midland Heart in order to justify withholding payment.
- 7.5 If Midland Heart fails to make an undisputed payment due to the Supplier upon request, Midland Heart will pay interest at 0% a year above the Bank of England's base rate from time to time on the overdue undisputed amount from the relevant due date until payment of the overdue undisputed amount.

## 8 **Intellectual Property Rights**

- 8.1 Each Party will retain all Pre-existing Intellectual Property in any materials provided to the other Party for the purposes of this Agreement.
- 8.2 Midland Heart will grant the Supplier a Midland Heart Intellectual Property Licence and the Supplier will grant Midland Heart the Supplier Historic Intellectual Property Licence.

- 8.3 All Intellectual Property Rights in any materials created or developed or arising from the Deliverables under the Agreement will belong to Midland Heart.
- 8.4 Where the Intellectual Property Rights in any materials still belong to the Supplier due to the operation of law pursuant to clause 8.3, the Supplier will grant Midland Heart the Supplier Intellectual Property Licence.
- 8.5 The Supplier will indemnify, and keep indemnified, Midland Heart in full against all costs, expenses, damages and losses (whether direct or indirect), awarded against or incurred or paid by Midland Heart as a result of or in connection with any claim made against Midland Heart for actual or alleged infringement of a third party's Intellectual Property Rights.
- 9 Liability**
- 9.1 Nothing in the Agreement will be construed to limit or exclude: (a) either Party's liability for death or personal injury, fraud or fraudulent misrepresentation or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other matter which, by law, may not be excluded or limited; and (b) the Supplier's liability for the indemnities at clauses 8.5 (Intellectual Property Rights) and 13.3 (Data Protection).
- 9.2 Subject always to clause 9.1:
- 9.2.1 the total liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to 200% of the charges paid or payable to the Supplier;
- 9.2.2 the total liability of Midland Heart in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to the value of the charges paid or payable to the Supplier;
- 9.2.3 except in the case of claims arising under clause 8.5, in no event will either Party be liable to the other for any: (a) loss of profits; (b) loss of business; (c) loss of revenue; (d) loss of or damage to goodwill; (e) loss of savings (whether anticipated or otherwise); and/or (f) indirect, special or consequential loss or damage.
- 10 Insurance**
- The Supplier will maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £2,000,000, public liability insurance at an amount not less than £10,000,000, products liability insurance at an amount not less than £10,000,000 and employers liability at an amount not less than £10,000,000.
- 11 Confidentiality**
- 11.1 Each Party undertakes that it will not at any time during the Agreement and for a period of six years after termination of the Agreement, disclose to any person any Confidential Information, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.2 No Party will use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 12 Compliance with relevant laws and policies**
- In performing its obligations under the Agreement, the Supplier shall: (a) at its cost comply with all applicable laws from time to time in force; and (b) comply with the mandatory policies as notified by Midland Heart.
- 13 Data protection**
- 13.1 During the term of this Agreement the Supplier acknowledges that it shall be the Data Controller in respect of any Personal Data that it Processes in the delivery of the Services and shall comply with its obligations under the applicable Data Protection Laws.
- 13.2 The Supplier shall assist Midland Heart to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause Midland Heart to breach any of their obligations

under the Data Protection Laws to the extent that the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

13.3 The Supplier shall indemnify and keep indemnified Midland Heart in respect of all data protection losses or damages suffered or incurred by, awarded against or agreed to be paid by, Midland Heart arising from or in connection with any breach by the Supplier of any of its obligations under this clause 13.

13.4 The Parties acknowledge that if for the purposes of the Data Protection Laws, Midland Heart becomes the Data Controller and the Supplier is the Data Processor, the Parties will enter into a separate Data Processing Agreement provided by Midland Heart.

#### 13.5 **Termination**

Without affecting any other right or remedy available to it, Midland Heart may terminate the Agreement: (a) with immediate effect by giving written notice to the Supplier if there is a Change of Control of the Supplier; or the Supplier commits a breach of clause 12 (Compliance with relevant laws and policies) or clause 13 (Data Protection); or (b) for convenience by giving the Supplier 30 days' written notice.

#### 14 **Consequences of termination**

14.1 On termination of the Agreement, the Supplier shall immediately deliver to Midland Heart all Deliverables and return all Midland Heart Materials. If the Supplier fails to do so, then Midland Heart 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 the Agreement.

14.2 Termination or expiry of the Agreement shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14.3 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 of the Agreement shall remain in full force and effect.

#### 15 **Force majeure**

15.1 Neither Party will be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from a Force Majeure Event. The associated obligations of the Party unable to perform will be suspended, and Midland Heart's obligation to pay the charges will also be suspended. Both Parties will mitigate their losses and meet in good faith to agree a plan to limit the consequences of the Force Majeure Event.

15.2 If the period of delay or non-performance due to a Force Majeure Event continues for six weeks, the Party not affected, or where both Parties are affected, either Party, may terminate the Agreement by giving two weeks' written notice to the other Party.

#### 16 **General**

16.1 Each of the parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

16.2 Unless expressly stated in this Agreement, a person not party to the Agreement will have no right to enforce any of its provisions without the prior written agreement of the parties.

16.3 Neither Party can assign any of its rights and obligations under this Agreement without the other's prior written consent (not to be unreasonably withheld or delayed).

16.4 Midland Heart may subcontract any or all of its rights or obligations under the Agreement. However, the Supplier cannot subcontract any or all of its rights or obligations under the Agreement without the prior written consent of Midland Heart. If Midland Heart consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

16.5 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the parties.

- 16.6 The Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. Both parties agree that they have not entered into the Agreement based on any representation that is not expressly incorporated into the Agreement.
- 16.7 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy under the Agreement or by law will not constitute a waiver or prevent any further exercise of that or any other right or remedy.
- 16.8 The Agreement does not constitute or imply any partnership or other relationship between the parties other than the contractual relationship under this Agreement. Neither Party has the authority to make any commitments on the other Party's behalf.
- 16.9 If any provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but will not affect the validity and enforceability of the rest of this Agreement.
- 17 **Modern Slavery Act 2015**
- The Supplier and its sub-contractors agree to use all reasonable endeavours to ensure that its employees or agents and/or supply chain will, at all times act in a way which is compliant with the Modern Slavery Act 2015.
- 18 **Notices**
- 18.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or subject to clause 18.3, e-mail to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 18.2 Notices served as personal delivery or first class recorded shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. Notices served as email shall be deemed delivered when sent unless an error message is received.
- 18.3 Notices may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 18.1.
- 19 **Governing Law and Jurisdiction**
- The Agreement is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.

## Schedule - Definitions

1 Where a term is not already defined in the Agreement, the following terms shall have the following meanings:

**Agreement** means the: (a) Terms and Conditions; and (b) Order;

**Commencement Date** has the meaning given in clause 2.1;

**Confidential Information** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;

**Control** has the meaning given in section 1124 Corporation Tax Act 2010, and the expression **Change of Control** shall be construed accordingly;

**Controller** has the meaning set out in the Data Protection Laws;

**Data Protection Laws** means: (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) of the United Kingdom which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the DPA and the UK GDPR; and (b) any code of practice or guidance published by a Supervisory Authority from time to time;

**Data Subject** has the meaning set out in the Data Protection Laws;

**Data Subject Request** means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Laws;

**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 Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party); and (h) interruption or failure of utility service;

**Goods** means the goods (or any part of them) set out in the Order;

**Intellectual Property Rights** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, rights under licences and consents in relation to any of them, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Midland Heart Intellectual Property Licence** means a royalty-free, revocable, non-exclusive, non-perpetual, non-sublicensable and non-transferable licence to use any materials for the sole purpose of enabling the Supplier to perform its obligations to Midland Heart under the Agreement until termination or expiry of the same;

**Midland Heart Materials** has the meaning set out in **Error! Bookmark not defined.5.3**;

**Midland Heart's Address** means Midland Heart's Address set out in the Order;

**Order** means Midland Heart's order for the supply of Goods and/or Services, as set out in Midland Heart's purchase order form;

**Personal Data** means any data relating to any person relevant to this Agreement including but not limited to name, address, contact details, date of birth, salary or any other data in relation to any person, including Sensitive Personal Data;

**Processing** has the meaning set out in the Data Protection Laws (and **Process**, **Processes** and **Processed** shall be construed accordingly);

**Pre-existing Intellectual Property** means any Intellectual Property Rights which: (a) in the case of Midland Heart, are owned by or licensed to Midland Heart (i) prior to the date of this Agreement; or (ii) after the date of this Agreement otherwise than by or pursuant to the terms of this Agreement; and (b) in the case of the Supplier is identified in writing as being owned by or licensed to the Supplier on delivery of the same to Midland Heart;

**Sensitive Personal Data** means any sensitive personal data or special categories of personal data as defined as such by the Data Protection Laws;

**Services** mean the services, including any Deliverables, to be provided by the Supplier under the Agreement as set out in the Order;

**Supervisory Authority** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws, including the UK Information Commissioner's Office, or any successor or replacement bodies from time to time;

**Supplier** means the person or firm from whom Midland Heart purchases the Goods and/or Services as detailed in the Order;

**Supplier Historic Intellectual Property Licence** means a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use (a) any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Agreement; and (b) any Intellectual Property Rights created during the Agreement but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Deliverables, including any modifications to or derivative versions of any such Intellectual Property Rights, which Midland Heart reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Deliverables provided;

**Supplier Intellectual Property Licence** means the present assignment of future rights and immediately upon coming into existence, all such Intellectual Property Rights (with full title guarantee and free from all third party rights);

**Terms and Conditions** means the main body context together with the Schedules;

**UK GDPR** means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) as incorporated into UK law by the European Union (Withdrawal) Act 2018 and subsequently amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419); and

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