

BASIC PURCHASE TERMS AND CONDITIONS



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1. Definitions and Interpretation

1.1 In these Conditions the following definitions apply:

"**Bribery Laws**" means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

"**Customer**" means Wightlink Limited, a company incorporated in England and Wales (company no. 01059267) whose registered address is at Gunwharf Terminal, Gunwharf Road, Portsmouth, Hampshire, PO1 2LA;

"**Conditions**" means the Customer's terms and conditions of purchase set out in this document;

"**Confidential Information**" means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;

"**Contract**" means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;

"**Data Protection Legislation**" means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws;
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (e) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Legislation (in each case whether or not legally binding);

"**Deliverables**" means the Goods or Services or both as the case may be;

"**Force Majeure**" means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce;

"**GDPR**" means the General Data Protection Regulation, Regulation (EU) 2016/679;

"**Goods**" means the goods and other physical material set out in the Order and to be supplied by the Supplier to the Customer;

"**Intellectual Property Rights**" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

"**Location**" means the address(es) for delivery of the Goods and performance of the Services as set out in the Order;

"**Order**" means the Customer's order for the Deliverables as set out in the Customer's Purchase Order Form;

"**Personal Data**" shall have the meaning given in the applicable Data Protection Legislation from time to time;

"**Price**" has the meaning given in clause **Error! Reference source not found.**;

"**processing**" has the meaning given in applicable Data Protection Legislation from time to time (and related expressions, including "**process**", "**processing**", "**processed**", and "**processes**" shall be construed accordingly);

"**Processor**" shall have the meaning given in applicable Data Protection Legislation from time to time;

"**Purchase Order Form**" means document through which the Customer may place an order for Goods or Services from the Supplier which shall include (among other things) the number of subscriptions and other services contracted for, the applicable fees, the billing period, and other charges as agreed by the parties from time to time;

"**Services**" means the services set out in the Order and to be supplied by the Supplier to the Customer;

"**Specification**" means the description or specification of the Deliverables set out or referred to in the Order; and

"**Supplier**" means the person who sells the Deliverables to the Customer and whose details are set out in the Order;

2. Application of these Conditions

- 2.1 These Conditions and any Order agreed by the parties apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply and shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Deliverables subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted, by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order or where the Supplier has not responded within 7 days of receipt of the Order.

3. Price

- 3.1 The Price for the Deliverables shall be as set out in the Order. No increase in the Price may be made after the Order is placed. The Price shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Deliverables. 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 Deliverables.
- 3.2 The Price includes all packaging, delivery and unloading required. No extra charges shall be effective unless agreed in writing and signed by the Customer.

4. Payment

- 4.1 The Supplier shall invoice the Customer for: (a) the Goods no sooner than completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods, (b) Services no sooner than completion of performance of the Services or, if later, the Customer's acceptance of the Services.
- 4.2 The Customer shall pay each validly submitted invoice of the Supplier within 60 days of receipt.

- 4.3 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, to compensate the Supplier for all loss from the Customer's breach, the Customer shall pay on the sum overdue interest (before and after judgment) on a daily basis until payment in full at the rate of two per cent per annum above the Bank of England base rate. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 VAT shall be charged by the Supplier and paid by the Customer at the then applicable rate.
- 4.5 All invoices raised by the Supplier must display the Supplier's name, company registration number and, where applicable, the VAT number and any VAT due on the invoice or in a format as otherwise stated by the Customer. The Supplier must also include all supporting documentation applicable to the invoice including, but not limited to, valid receipts for expenses, signed timesheets and vessel stamp.

5. Cancellation

- 5.1 The Customer shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to, and in the case of Services, performed for, the Customer.

6. Delivery and Performance

- 6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on arrival of the Goods at the Location.
- 6.2 The Supplier shall ensure that the Goods shall:
- 6.2.1 correspond with their description and any applicable Goods Specification;
 - 6.2.2 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 judgement;
 - 6.2.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - 6.2.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 6.4 In providing the Services, the Supplier shall:

- 6.4.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- 6.4.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 6.4.3 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 the Contract;
- 6.4.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- 6.4.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.4.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- 6.4.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 6.4.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 6.4.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 6.4.10 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- 6.5 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Customer.
- 6.6 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, the Customer shall (without prejudice to its other rights and remedies) be entitled at the Customer's sole discretion:
 - 6.6.1 to terminate the Contract in whole or in part;

- 6.6.2 to refuse to accept any subsequent performance of the Deliverables which the Supplier attempts to make;
- 6.6.3 to purchase the same or similar Deliverables from a supplier other than the Supplier;
- 6.6.4 to recover from the Supplier all costs and losses resulting to the Customer, including the amount by which the price payable by the Customer to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit;
- 6.6.5 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
- 6.6.6 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates; and
- 6.6.7 all or any of the foregoing.

7. Acceptance, Rejection and Inspection

- 7.1 The Customer shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions, as defined in clause 7.2, are fulfilled.
- 7.2 The Acceptance Conditions are that:
 - 7.2.1 for Goods, the Goods have been delivered to or at the Location;
 - 7.2.2 for Services, the Services have been performed at the Location; and
 - 7.2.3 the Customer has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the terms and conditions of the Contract.
- 7.3 The Customer shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

8. Title and Risk

- 8.1 Risk in the Goods shall pass to the Customer on delivery and when the Customer has accepted the Goods as conforming in every respect with the Contract.
- 8.2 Title to the Goods shall pass to the Customer on the sooner of: (a) payment by the Customer for the Goods; or (b) delivery of the Goods to the Customer.

9. Warranty

- 9.1 The Supplier warrants and represents that, for a period of 12 months from acceptance (the Warranty Period), the Deliverables shall:
 - 9.1.1 conform to any sample, their description and to the Specification;
 - 9.1.2 be free from defects in design, material and workmanship;
 - 9.1.3 comply with all applicable laws, standards and best industry practice;
 - 9.1.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 9.1.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
 - 9.1.6 be fit for purpose and any purpose held out by the Supplier and set out in the Order; and
 - 9.1.7 any media on which the results of the Services are supplied shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 The Customer may reject any Deliverables that do not comply with clause 9.1 and the Supplier shall, at the Customer's option, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables provided that the Customer serves a written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with clause 9.1.
- 9.3 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance of the remedied, repaired, replaced, corrected or re-performed Deliverables.

10. Anti-Bribery

- 10.1 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
 - 10.1.1 all of that party's personnel;

10.1.2 all others associated with that party; and

10.1.3 all of that party's subcontractors; involved in performing the Contract so comply.

11. Indemnity

11.1 The Supplier shall fully indemnify, and keep indemnified, the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with the Supplier's breach of any of the Supplier's obligations under the Contract (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

11.1.1 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 (excluding the Customer Materials);

11.1.2 any claim made against the Customer arising out of or in connection with the Supplier's breach of clause 16 of this Contract (processing of Personal Data) and any of its obligations under Data Protection Legislation; and

11.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

12. Insurance

12.1 During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer'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.

13. Limitation of Liability

13.1 Subject to clauses 12.4 and 12.5, the Customer's total liability under the Contract shall not exceed the amount paid in relation to each relevant Order.

13.2 Subject to clauses 12.4 and 12.5, the Customer shall not be liable for consequential, indirect or special losses.

13.3 Subject to clauses 12.4 and 12.5, the Customer shall not be liable for any of the following (whether direct or indirect):

- 13.3.1 loss of profit;
 - 13.3.2 loss of or corruption to data;
 - 13.3.3 loss of use;
 - 13.3.4 loss of production;
 - 13.3.5 loss of contract;
 - 13.3.6 loss of opportunity;
 - 13.3.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 13.3.8 harm to reputation or loss of goodwill.
- 13.4 The limitations of liability set out in clauses 12.1 to 12.3 shall not apply in respect of any indemnities given by either party under the Contract.
- 13.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 13.5.1 death or personal injury caused by negligence;
 - 13.5.2 fraud or fraudulent misrepresentation;
 - 13.5.3 any other losses which cannot be excluded or limited by applicable law;
 - 13.5.4 any losses caused by wilful misconduct.

14. Intellectual Property Rights

- 14.1 All specifications provided by the Customer and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest in and remain at all times the property of the Customer and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Customer absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Customer's opinion to so vest all such Intellectual Property Rights in the Customer, and to enable the Customer to defend and enforce such Intellectual Property Rights, and the Supplier shall at the Customer's request waive or procure a waiver of applicable moral rights.
- 14.2 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party (a Supplier IPR Claim).

15. Confidentiality

- 15.1 The Supplier shall keep confidential all Confidential Information of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 15.1.1 any information which was in the public domain at the date of the Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the Supplier without using information supplied by the Customer ; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 15.2 This clause shall remain in force in perpetuity.

16. Processing of Personal Data

- 16.1 Each party warrants that it shall at all times fully comply with its obligations under all relevant Data Protection Legislation and shall not perform their obligations under the Contract in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.
- 16.2 The Supplier shall full indemnify and keep indemnified the Customer against:
- 16.2.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Supplier of its obligations under this clause 15; and
 - 16.2.2 all amounts paid or payable by the Customer to a third party which would not have been paid or payable if the Supplier's breach of this clause 15 had not occurred.
- 16.3 Should the Supplier be deemed a Processor then the parties will enter into a separate Data Processing Agreement.

17. Force Majeure

- 17.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

17.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

17.1.2 uses best endeavors to minimise the effects of that event.

17.2 If, due to Force Majeure, a party:

17.2.1 is or shall be unable to perform a material obligation; or

17.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days; the other party may terminate the Contract on immediate notice.

18. Termination

18.1 The Customer may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:

18.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;

18.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;

18.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

18.2 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

18.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

18.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;

18.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

18.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

18.2.5 has a resolution passed for its winding up;

18.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

18.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;

18.2.8 has a freezing order made against it;

18.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;

18.2.10 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.9 in any jurisdiction;

18.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.

19. Notices

19.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

19.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

19.1.2 sent by email to the address specified in the Order.

20. Entire Agreement

20.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

20.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

21. Variation

No variation of the contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the customer.

22. Assignment

22.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent.

23. Set off

- 23.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.
- 23.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24. No Partnership or Agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

25. Severance

- 25.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

26. Conflicts within Contract

- 26.1 If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

27. Third Party Rights

- 27.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

28. Governing Law

The contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

29. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).