

## CONDITIONS OF PURCHASE

### 1. INTERPRETATION

(a) In these Conditions:

'BUYER' means The Moredun Foundation, registered in Scotland under number SC151865, having its registered office at Pentlands Science Park, Bush Loan, Penicuik, Scotland, UK EH26 OPZ.

'CONDITIONS' means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special conditions or variations agreed in Writing between the Buyer and the Seller.

'CONTRACT' means the contract between the Buyer and the Seller for the sale and purchase of Goods and/or the supply and acquisition of Services in accordance with these Conditions.

'DELIVERABLES' means all documents, products and materials developed by the Seller 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).

'DELIVERY ADDRESS' means that address stated on the Order.

'GOODS' means the Goods (including any instalment of the goods or any part of them) described in the Order.

'ORDER' means the Buyer's purchase order to which these Conditions are annexed and incorporated.

'PRICE' means the price of the Goods and/or the charge for the Services (as applicable) as specified in the Order.

'SELLER' means the person, firm or company from whom the Buyer purchases the Goods and/or Services, as so described in the Order.

'SERVICES' means the services together with any Deliverables (if any) described in the Order.

'SPECIFICATION' means the description or specification of the Goods and/or Services, agreed in Writing between the Buyer and the Seller.

'WRITING' includes email and fax.

(b) Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

### 2. BASIS OF PURCHASE

(a) The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to and in accordance with these Conditions.

(b) The Order shall be deemed to be accepted on the earlier of:

(i) the Seller confirming (in Writing) its acceptance of the Order; or

(ii) any act by the Seller which is consistent with fulfilling the Order; At which point and upon which date the Contract shall come into existence.

(c) These Conditions shall apply to the Contract to the exclusion of any other terms and conditions that the Seller seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

(d) All Orders must be signed by a duly authorised signatory for and on behalf of the Buyer.

(e) 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 a duly authorised representative of each of the Seller and the Buyer.

### 3. SPECIFICATIONS

(a) The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification.

(b) The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods and/or the performance of the Services (as applicable) and shall ensure that it has (and maintains) at all times, all necessary licences, permissions, consents and authorisations required to enable it to lawfully perform its obligations under the Contract.

(c) The Seller shall not unreasonably refuse any request of the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to dispatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing free of charge. The Seller shall remain fully responsible for the Goods during (and despite) any such inspection or testing.

(d) If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 10 working days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance. The Buyer may conduct further inspection and/or testing once the Seller has carried out any required remedial steps.

(e) The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

### 4. PRICE OF THE GOODS AND SERVICES

(a) The price of the Goods and/or the Services shall be stated in the Order and, unless otherwise so stated shall be:

(i) exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and

(ii) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax. No extra charges or expenses shall be effective unless agreed in Writing by the Buyer.

(b) No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) unless agreed in Writing by the Buyer.

(c) The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume purchase customarily granted by the Seller, whether or not shown on the Seller's own terms and conditions of sale.

### 5. TERMS OF PAYMENT

(a) The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, and each invoice shall quote the number of the Order.

(b) Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods and Services within 45 days after the end of the month of receipt by the Buyer of a valid invoice or, if later, after acceptance of the Goods or Services in question by the

Buyer. Time of payment shall not be of the essence of the Contract.

- (c) The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.
- (d) 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 sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue at 2% per year above the Bank of England's base rate from time to time.

## 6. DELIVERY

- (a) The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours (8.30am to 5pm Monday to Thursday, 8.30am to 4.30pm Friday).
- (b) Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- (c) The time of delivery of the Goods and/or of performance of the Services is of the essence of the Contract.
- (d) A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- (e) If the Goods are to be delivered or the Services are to be performed by instalments, the Contract shall be treated as a single contract and not several.
- (f) The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract (including where more or less than the quantity of Goods ordered are delivered), and shall not be deemed to have accepted any Goods until the Buyer has had 15 days to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and accordingly the Buyer shall be entitled to reject the Goods if they are not in conformity with the Contract. Any rejected Goods shall be returned at the Seller's risk and expense.
- (g) The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- (h) The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer.
  - (i) If the Seller fails to deliver the Goods by the due date or to perform the Services by the due date, the Buyer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
  - (ii) to terminate the Contract with immediate effect by giving written notice to the Seller;
  - (iii) to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Seller attempts to make;
  - (iv) to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods or services from a third party;

- (v) to require a refund from the Seller of sums paid in advance for Services that the Seller has not provided or Goods that it has not delivered; and/or
- (vi) to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.

- (j) If the Goods are not delivered or the Services are not performed on the due date then, the Buyer shall be entitled, at its option, to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller, by way of liquidated damages for delay, 10% of the Price for every 7 days' delay, up to a maximum of 70% of the Price. If the Buyer successfully exercises its rights in respect of late delivery/performance under this clause 6(j), it shall not also be entitled to any of the remedies set out in clause 6(i) in respect of the late delivery/performance of the Goods/Services.

## 7. RISK AND PROPERTY

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer, upon completion of delivery to the Buyer in accordance with the Contract. Delivery shall be completed upon completion of the unloading of the Goods at the Delivery Address.
- (b) The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to the delivery, when it shall pass to the Buyer once payment has been made. The passing of ownership is without prejudice to any right of rejection to which the Buyer may be entitled under the Contract or otherwise.

## 8. WARRANTIES AND LIABILITY

- (a) The Seller warrants to the Buyer that the Goods:
  - (i) will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or expressly or impliedly made known to the Seller at the time the Order is placed,
  - (ii) will be free from defects in design, material and workmanship and will remain so for at least 12 months after delivery (or, if longer, for the period of any extended warranty granted by the Seller);
  - (iii) will correspond with any relevant Specification or sample; and
  - (iv) will comply with all statutory requirements and regulations for the time being in force relating to the manufacture, labelling, packaging, handling and sale of the Goods.
- (b) The Seller warrants to the Buyer that the Services will be performed in accordance with the Buyer's instructions, by appropriately qualified and trained personnel, with due care and diligence and in accordance with best practice in the Seller's industry, trade or profession. The Seller shall ensure that the Services will conform with the Specification, and that the Deliverables shall be fit for any purpose that the Buyer expressly or impliedly makes known to the Seller.
- (c) Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
  - (i) to terminate the Contract with immediate effect by giving written notice to the Seller;
  - (ii) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense;

- (iii) to require the Seller to repair or replace the rejected Goods or Deliverables, or to provide a full refund of the price of the rejected Goods or Deliverables (if paid);
  - (iv) to require the Seller to repeat the performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
  - (v) to refuse to accept any subsequent delivery of the Goods, or any subsequent performance of the Services which the Seller attempts to make;
  - (vi) to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute goods or services from a third party; and
  - (vii) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply Goods or provide the Services (including Deliverables) in accordance with these Conditions.
- (d) The Seller shall indemnify and keep indemnified the Buyer in full against all liability; loss (whether direct or indirect, and including loss of profits), damages, costs and expenses (including legal and other professional expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- (i) breach of any warranty given by the Seller in relation to the Goods or the Services;
  - (ii) any claim that the Goods and/or the Services infringe, or their importation, performance, use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from materials provided by the Buyer or compliance with any Specification supplied by the Buyer;
  - (iii) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables (including, without limitation, any liability under the Consumer Protection Act 1987 in respect of the Goods/Deliverables);
  - (iv) any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and/or in connection with the performance of the Services, including (without limitation) any injury, loss or damage to persons caused or contributed to by the negligence or breach of the Seller its employees, agents or sub-contractors or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Buyer, its employees or agents).
- (e) Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or Services, if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
- (i) act of God, explosion, flood, tempest, fire or accident;
  - (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (iii) acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (iv) import or export regulations or embargoes;
  - (v) strikes, lock outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party);
  - (vi) if either party is relieved under this clause 8 (e) from performing any of its obligations under this Contract for a continuous period in excess of 1 month, or for an aggregate period in any consecutive period of 12 months in excess of 3 months, then the other party may, notwithstanding any other provision of these Conditions, terminate the Contract by giving notice to the affected party
- (f) The Seller shall maintain, with a reputable insurer, adequate insurance to cover its liabilities under the Contract and shall produce the policy and latest premium receipt to the Buyer on demand.
- (g) The Buyer's rights and remedies under the Contract are in addition to (and not exclusive of) any rights and remedies implied by statute and common law.
- ## 9. TERMINATION
- (a) The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance without incurring any liability to the Seller other than to pay for Goods and/or Services already manufactured (but only to the extent manufactured to the Buyer's Specification), delivered or performed at the time of such notice.
- (b) Either party shall be entitled to terminate the Contract (without liability to the other and reserving all rights) by giving notice in Writing to the other party, in the event that:
- (i) (without prejudice to any other Condition) the other party is in material breach of any of its obligations under the Contract and such breach (if capable of remedy) is not remedied within 14 days' of being notified of such breach in Writing;
  - (ii) the other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or a firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - (iii) an encumbrance takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the other party; or
  - (iv) the other party ceases, or threatens to cease, to carry on business, or substantially changes the nature of its business; or
  - (v) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly, in Writing;
  - (vi) any event occurs, or proceeding is taken, with respect to the other party, in any jurisdiction to which it is subject, that has an effect equivalent or similar to any of the events mentioned in Conditions 9(b)(ii) – (iv) (inclusive).
- (c) Upon termination of the Contract, the Seller shall immediately return any property or materials of the Buyer which are in its possession. Termination of the Contract shall not affect the accrued rights and remedies of either party, nor shall it affect any Condition expressed or intended to survive termination

## 10. CONFIDENTIALITY

- (a) All information of whatever nature supplied to the Seller by the Buyer at any time in connection with the Contract shall be regarded as confidential, and shall not without the prior consent in Writing of the Buyer be published or disclosed to any third party (save as required by law) or used by the Seller except for the purpose of implementing the Order, and the Seller shall not, without such consent, advertise or announce the supply of the Goods and/or Services to the Buyer. This obligation shall remain in force notwithstanding completion, cancellation or termination of the Contract.
- (b) All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Buyer to the Seller shall at all times be and remain the exclusive property of the Buyer, and shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer, and shall not be disposed of or used other than in accordance with the Buyer's written instructions or authorisation. The Seller shall return all copies of any such material to the Buyer immediately on the Buyer's first written request

## 11. ANTI-BRIBERY

- (a) The Seller shall, for the duration of the Contract:
  - (i) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - (ii) comply with the Buyer's Ethics, Anti-bribery and Anti-corruption Policies (available on request), in each case as updated by the Buyer from time to time (Relevant Policies);
  - (iii) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
  - (iv) promptly notify the Buyer (in Writing) if it becomes aware of any breach of clause 11(a)(i) or clause 11(a)(ii), or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract;
  - (v) immediately notify the Buyer (in writing) if a foreign public official becomes an officer or employee of the Seller and/or acquires a direct or indirect interest in the Seller (and the Seller warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of the Contract); and
  - (vi) within 2 months of the date of the Contract, and annually thereafter, certify to the Buyer in Writing signed by an officer of the Seller, compliance with this Condition 11(a) by the Seller and all persons associated with it and all other persons for whom the Seller is responsible under condition 11(a). The Seller shall provide such supporting evidence of compliance as the Buyer may reasonably request.
- (b) Breach of Condition 11(a) shall be deemed a material breach, which is not capable of remedy, the result of which the Buyer shall be entitled to immediately terminate the Contract without liability to the Seller and reserving all rights of the Buyer.

- (c) For the purpose of Condition 11(a), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of Condition 11(a) a person associated with the Seller includes but is not limited to any subcontractor of the Seller.

## 12. ANTI-SLAVERY AND HUMAN TRAFFICKING

- (a) In performing its obligations under the Contract, the Seller shall:-
  - (i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-Slavery Laws) including, but not limited to, the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
  - (ii) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
  - (iii) comply with the Buyer's Anti-Slavery Policy (available on request);
  - (iv) include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 12;
  - (v) notify the Buyer in Writing as soon as it becomes aware of any actual or suspected breach of this clause 12; and
  - (vi) maintain appropriate records to trace the supply chain of all Goods and/or Services provided to the Buyer in connection with this agreement; and permit the Buyer and its third party representatives to inspect the Seller's premises, records, and to meet the Seller's personnel to audit the Seller's compliance with its obligations under this clause 12.
- (b) The Seller warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- (c) Breach of this clause 12 shall be deemed a material breach under clause 9 which is not capable of remedy.

## 13. DATA PROTECTION

- (a) Each party shall comply with all applicable data protection laws in exercising their rights and/or performing their obligations under the Contract including, without limitation, the retained EU law version of the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (as amended).
- (b) Without prejudice to the generality of clause 13 (a), the Seller shall maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of personal data (as defined by applicable legislation) and to prevent any loss, destruction or unauthorised disclosure of personal data.

## 14. ANTI-FACILITATION OF TAX EVASION

- (a) The Supplier shall, for the duration of the Contract:
  - (i) not engage in any activity or practice which would constitute (respectively) either a UK tax evasion facilitation offence or a foreign tax evasion facilitation

offence, under sections 45(5) and 46(6) of the Criminal Finances Act 2017;

- (ii) comply with any policies of the Buyer in relation to anti-facilitation of tax evasion and/or criminal financing, as updated by the Buyer from time to time;
  - (iii) establish, maintain and enforce its own policies as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with clause 14(a)(i);
  - (iv) include in contracts with its subcontractors anti-facilitation of tax evasion provisions that are at least as onerous as those set out in this clause 14;
  - (v) notify the Buyer in Writing as soon as it becomes aware of any actual or suspected breach of this clause 14; and
  - (vi) upon request by the Buyer, certify that it has complied with the provisions of this clause 14.
- (b) Breach of this clause 14 shall be deemed a material breach under clause 9, which is not capable of remedy.
- (c) For the purposes of this clause 14, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.

#### **15. GENERAL**

- (a) The Order is personal to the Seller and the Seller shall not assign or purport to assign or transfer to any other person any of its rights or sub contract any of its obligations under the Contract. The Buyer is a member of the group of companies whose parent company is The Moredun Foundation, and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other members shall be deemed to be the act or omission of the Buyer.
- (b) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that party at its registered office or principal place of business or such other address, email address or fax number as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (c) No waiver of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (d) The headings in these Conditions are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Conditions.
- (e) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- (f) The Contract shall be governed by the laws of Scotland, and the parties submit to the exclusive jurisdiction of the Scottish courts.