

## INTRODUCTION

These Conditions set out the entire terms and conditions upon which the Supplier has agreed to supply goods and/or services to the Customer and shall apply to the exclusion of any other terms and conditions including any other terms and conditions which the Customer may purport to apply whether through the use of any standard form documents or otherwise.

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings: **Conditions** means these terms and conditions together with any other document incorporated into these Conditions in accordance with their terms; **Contract** means a contract between the Customer and the Supplier for the sale and purchase of Goods and/or the performance of Services (as applicable) made subject to these Conditions which has come into force following the acceptance of an Order in accordance with Clause 2.3; **Force Majeure Event** means any circumstance beyond the control of the Supplier including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, failure of sub-contractors or suppliers, inability or difficulties in obtaining raw materials or other supplies, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action; **Goods** means the goods as detailed in any Order; **Insolvency Event** means with respect to the Customer that: **(a)** any meeting of creditors of the Customer is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Customer; **(b)** the Customer ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; **(c)** a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Customer or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of the Customer; **(d)** a petition is presented for the winding-up of the Customer or a resolution for its winding up is passed; **(e)** a notice of intention to appoint an administrator is filed with the court or served on any creditor of the Customer; **(f)** an application for an administration order in respect of the Customer is issued at court; **(g)** a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or the making of an application for an administration order or the dissolution of the Customer; **(h)** any Main or Territorial proceedings are opened within the meaning of the EC Regulation on Insolvency Proceedings 2000 with respect to the Customer; and/or **(i)** any event analogous to any of the foregoing occurs to the Customer in any jurisdiction; **Order** means the Customer's order for any Goods and/or Services as may be set out in any purchase order issued by the Customer to the Supplier or in any other written request for Goods and/or Services which is issued by the Customer to the Supplier from time to time (but excluding in either case any terms and conditions which the Customer may purport to apply in any such purchase order or other written order); **Price** means the price payable by the Customer for the Goods and/or Services as set out in the applicable Order which has been accepted in accordance with Clause 2.3 or, where no price is detailed in the applicable Order, the Supplier's list price for the Goods and/or Services in question in force as at the date of delivery or performance (subject in either case to adjustment in accordance with Clause 4.4 and/or 7.3); **Services** means the services as detailed in any Order; and **Supplier** means the applicable SAICA group company named in the Order in question.
- 1.2 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; words and expressions not defined in these Conditions shall have the meanings as provided for under the Data Protection Act 1998; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

### 2 BASIS OF CONTRACT

- 2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which otherwise are implied by trade, custom, practice or course of dealing.
- 2.2 Each Order constitutes an offer by the Customer to purchase the Goods and/or Services in question in accordance with these Conditions. The Customer shall ensure that the terms of any Order submitted by it are complete, accurate and not misleading.
- 2.3 Each Order shall be deemed accepted on the earlier of: **(a)** the Supplier issuing a written acceptance of the Order; or **(b)** the Supplier commencing delivery of any Goods and/or commencing the performance (or preparing to commence the performance) of any Services.
- 2.4 The Supplier shall be under no obligation to accept any Orders which may be submitted to it from time to time and shall be entitled to decline to accept any Orders without liability or the need to give reason.

### 3 STANDARDS

- 3.1 The Supplier warrants that all Goods supplied by it shall: **(a)** correspond in all material respects with any specification provided by the Supplier; and **(b)** be free from material defects in design, material and workmanship and fit for any purpose held out by the Supplier in either case, on delivery and thereafter for a period of 90 days or if earlier, any expiry/best before date stated on the packaging of the Goods (subject in either case to those Goods being stored in appropriate conditions).
- 3.2 The Supplier warrants that all Services performed by it shall: **(a)** correspond in all material respects with any specification provided by the Supplier; and **(b)** will be performed in a good and workmanlike manner exercising all reasonable skill, care and diligence and in accordance with prevailing industry practices and standards.
- 3.3 Where any Services require the Supplier to handle or process any Personal Data of which the Customer is a Data Controller (including Services for the secure destruction of documents for the Customer), the Supplier shall handle and process such Personal Data solely for the purposes of providing those Services but not further or otherwise. In respect of such Services the Supplier shall take appropriate technical, organisational and security measures to protect against the accidental loss or unauthorised or unlawful processing of such Personal Data and will take reasonable steps to ensure the reliability of any of its employees handling such Personal Data. Having regard to the state of technological development and the cost of implementing any measures, the Customer agrees that the foregoing measures taken by the Supplier shall ensure a level of security appropriate to the harm that might result from the accidental loss or unauthorised or unlawful processing of such Personal Data.
- 3.4 The Customer acknowledges that where any Services include the secure destruction of documents, once such documents are placed into the custody of the Supplier they will not be recoverable and no recovery mechanism exists to restore any documents incorrectly provided by the Customer to the Supplier for destruction. The Customer shall ensure that it has in place all necessary consents and authorisations as may be required to enable it to lawfully provide any such documents to the Supplier for secure destruction.
- 3.5 The Supplier may vary the specification for any Goods and/or Services prior to delivery if necessary in order to comply with any applicable statutory or regulatory requirement or for any other reason provided that in that case, the variation in question does not result in any material adverse change to the specification in existence at the Customer's Order for the Goods or Services in question was accepted. Such changes may include, but are not limited to, variations to paper grammages.
- 3.6 Each Contract represents the entire agreement between the parties relating to the supply of the Goods and/or Services in question and the Customer acknowledges that it will not rely on and has not relied on any statement, promise or representation made by or on the behalf of the Supplier which is not set out in writing in the applicable Contract.
- 3.7 Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by the Supplier concerning any Goods and/or Services are produced and provided solely for the purpose of giving an approximate idea of the Goods and/or Services described and such information and items shall not form part of any Contract nor have any contractual force.

### 4 DELIVERY AND PERFORMANCE

- 4.1 Where pursuant to any Contract: **(a)** the Supplier has agreed to make delivery to the Customer the Supplier shall deliver the Goods to the location as specified in the applicable Order on or around any delivery date as detailed in the Order or, if no delivery date is detailed in the Order, on the date as specified by the Supplier (although time of such delivery shall not be of the essence); or **(b)** the Customer is to collect the Goods from the Supplier then the Customer shall collect such Goods from the location advised by the Supplier during the usual working hours of the Supplier within 3 days of the date on which the Supplier advises the Customer that such Goods are ready for collection (and time for collection of such Goods shall be of the essence) and such collection shall constitute "delivery" for the purposes of these Conditions.
- 4.2 In the event that the Customer fails to: **(a)** accept delivery of any Order when the Supplier first attempts to make delivery; or **(b)** collect any Order within the time period required under Clause 4.1 then in either case: **(c)** risk of loss or damage occurring to the relevant Goods shall be deemed to pass to the Customer at the time when the Supplier first attempted to make delivery or upon the expiry of the time period specified in Clause 4.1 (as applicable); **(d)** for the purposes of Clause 7.6 delivery shall be deemed to have taken place on the date that the Supplier first attempted to make delivery or upon the expiry of the time period specified in Clause 4.1 (as applicable); and **(e)** the Customer shall indemnify the Supplier in full on demand for all costs and expenses incurred by the Supplier in storing the Goods in question and attempting re-delivery.
- 4.3 The Supplier may deliver Goods in instalments, the Price of which shall be invoiced and paid for separately. Any such instalment shall constitute a separate Contract and any delay in delivery or defect in one instalment shall not entitle the Customer to cancel any other instalment.
- 4.4 The Supplier may deliver up to more or less than 5% of the volume of Goods comprised within any Order and the Customer shall not be entitled to reject any delivery on the basis of any difference in volume within such tolerances. In such circumstances the Price of the relevant Order shall be adjusted on a pro-rata basis to reflect the actual volume of Goods delivered.
- 4.5 The Supplier shall perform any Services at the location as specified in the applicable Order on or around the date for performance of those Services as detailed in the Order or, if no date is detailed in the Order, on the date specified by the Supplier (although time of performance shall not be of the essence). The Customer shall provide the Supplier with such access to any location where Services are to be performed as may be necessary to enable performance of the Services in question and, prior to the date on which the Supplier is to commence the performance of any Services, the Customer shall undertake at its own expense any preparatory works as may be specified in the Order or otherwise which are advised by the Supplier to the Customer as being reasonably necessary to enable the Supplier to perform the Services at the relevant location.
- 4.6 In the event that the Supplier is unable to perform any Services as a result of the Customer failing or delaying in complying with its obligations under Clause 4.5 then: **(a)** the Customer shall indemnify the Supplier in full on demand for all costs and expenses incurred by the Supplier as a result of the Customer failing or delaying in complying with its obligations under Clause 4.5; and **(b)** for the purposes of Clause 7.6 the Supplier shall be deemed to have commenced performance of the Services on the date that the Supplier would have commenced performance of the Services were it not for the Customer's failure or delay to comply with its obligations under Clause 4.5.

### 5 WARRANTY CLAIMS

- 5.1 The Customer shall: **(a)** conduct a thorough visual inspection of any Goods on delivery and/or of the output of any Services upon completion of the Services in question and shall notify the Supplier in writing in the case of Goods, of any damage to their packaging or other apparent failure of the Goods to comply with the warranty set out at Clause 3.1 on delivery within seven days of the date of delivery and in the case of Services, of any apparent failure of those Services to comply with the warranty set out at Clause 3.2 within seven days of the date of completion of the performance of the Services in question; and/or **(b)** shall notify the Supplier in writing of any failure of any Goods or Services to comply with the warranty set out at Clause 3.1 or 3.2 (as applicable) which arises after the date of delivery or performance (as applicable) within seven days of the date of which the Customer first became aware (or ought reasonably to have become aware) of the failure in question.
- 5.2 In the event of the Customer making any claim under the warranty set out at Clause 3.1 or 3.2 (as applicable) which the Supplier (acting reasonably) considers to be valid then the Supplier shall (at its discretion) as soon as reasonably practicable in the case of Goods either repair or replace the Goods (or the affected part of the Goods) or refund to the Customer the Price actually paid by it to the Supplier for the Goods or, in the case of Services re-perform the affected Services or refund to the Customer the Price actually paid by it to the Supplier for the affected Services. Any such replacement Goods shall be subject to the warranty set out at Clause 3.1 and any re-performed Services shall be subject to the warranty set out at Clause 3.2.

5.3 The Customer shall on request: **(a)** permit the Supplier to access any premises where any Goods which are the subject of a warranty claim are located for the purposes of inspecting and testing those Goods; **(b)** permit the Supplier to access any location where Services may have been performed which are the subject of a warranty claim for the purposes of inspecting and testing the output of those Services; and/or **(c)** promptly return to the Supplier (at the Customer's expense) any Goods which are the subject of a warranty claim.

5.4 The Customer shall on demand reimburse the Supplier for any reasonable costs and expenses which are incurred by it in investigating any warranty claim made by the Customer which is subsequently found to be invalid for any reason.

5.5 Compliance by the Supplier with its obligations under Clause 5.2 shall represent the Customer's sole and exclusive remedy (and the Supplier's only liability) in respect of any failure of the Goods to comply with the warranty set out at Clause 3.1 and/or any Services to comply with the warranty set out in Clause 3.2 (subject at all times to Clause 9.1).

5.6 The terms implied by sections 13 – 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from any Contract.

## **6 EXCLUSIONS FROM WARRANTY CLAIMS**

6.1 The Supplier shall have no liability or responsibility to the Customer (whether under any Contract or otherwise) in respect of any failure of the Goods to comply with the warranty set out at Clause 3.1 or the failure of any Services to comply with the warranty set out at Clause 3.2: **(a)** which is not notified by the Customer to the Supplier in accordance with Clause 5.1; **(b)** in the event that the Customer fails to comply with its obligations under Clause 5.3; **(c)** in the event that the Customer makes any further use of, or sells on the Goods and/or Services after becoming aware of any failure of the Goods and/or Services to comply with the warranty set out at Clause 3.1 or 3.2 (as applicable); **(d)** which is attributable to any failure by the Customer to follow the Supplier's oral or written instructions as to the storage, handling and use of the Goods and/or Services and/or any failure by the Customer to follow good trade practice regarding the same; **(e)** in the event that the Customer alters the Goods and/or Services (or permits any third party to do so) without the written consent of the Supplier; **(f)** where any failure of the Goods and/or Services arises as a result of fair wear and tear, wilful damage, negligence, or abnormal or incorrect storage or working conditions; **(g)** where any Goods and/or Services differ from their specification as a result of changes made to ensure that the Goods comply with any applicable legal or regulatory requirements; and/or **(h)** which is attributable to the Goods and/or Services in question having been produced or performed by the Supplier in accordance with designs, specifications or other instructions provided to the Supplier by or on the behalf of the Customer.

## **7 PRICE AND PAYMENT**

7.1 Any quotations which are provided by the Supplier do not constitute an offer which is capable of acceptance by the Customer and may be withdrawn by the Supplier without liability at any-time. Any quotations not withdrawn earlier by the Supplier shall automatically lapse 30 days after the date of issue.

7.2 All Prices are stated exclusive of the costs and expense of packaging, insuring and transporting the Goods to the Customer which shall be paid for by the Customer in addition.

7.3 The Supplier shall be entitled at any-time prior to invoicing the Customer for the Price of an Order to increase that Price to reflect any increase to the Supplier's costs of sourcing, manufacturing and supplying the Goods in question and/or performing the Services in question.

7.4 All Prices are stated exclusive of VAT which shall be paid by the Customer in addition at the rate from time to time in force (subject to the provision of a VAT invoice by the Supplier).

7.5 Unless the Supplier has agreed to grant the Customer credit terms (or should the Customer have exceeded any credit limit set by the Supplier from time to time), the Customer shall pay the Price of each Order to the Supplier in full in cleared funds prior to the date of delivery or commencement of performance (as applicable).

7.6 Where the Supplier has agreed to grant the Customer credit terms then unless otherwise agreed in writing, the Supplier may invoice the Customer for the Price of each Order at any-time on or after completion of delivery or performance and the Customer shall pay all such invoices in full in cleared funds within 30 days of the date of invoice.

7.7 Time of payment shall be of the essence.

7.8 The Supplier shall be entitled to suspend, vary or withdraw any credit terms granted by it to the Customer at any-time on notice.

7.9 In the event that the Customer fails to pay any sum due from it under any Contract (including the Price) by the due date for payment then without prejudice to any other rights or remedies available to it (whether under the applicable Contract or otherwise) the Supplier shall be entitled to charge interest on such amount together with the cost of recovery in each case, in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.

7.10 The Price together with any other amounts which may be due to be paid by the Customer to the Supplier under any Contract shall be paid by the Customer in full in cleared funds without set-off, withholding, deduction or counterclaim.

7.11 All sums payable by the Customer to the Supplier under any Contract (including the Price) shall become immediately due and payable by the Customer upon termination of the Contract in question.

## **8 RISK AND TITLE**

8.1 Risk of loss or damage occurring to Goods shall pass from the Supplier to the Customer upon completion of delivery of the Goods in question or as otherwise provided for under Clause 4.2. Risk of loss or damage occurring to the product of any Services shall pass from the Supplier to the Customer upon completion of the performance of the Services in question.

8.2 Ownership of any Goods delivered to the Customer and/or the product of any Services shall not pass from the Supplier to the Customer unless and until the Supplier has received from the Customer in full in cleared funds: **(a)** the Price of the Goods or Services in question; and **(b)** any other payment which is due to be paid by the Customer to the Supplier under any other Contracts in force from time to time.

8.3 Until title to any Goods or the product of any Services has passed to the Customer, the Customer shall: **(a)** hold those Goods or products on a fiduciary basis as the Supplier's bailee; **(b)** store those Goods or products separately from any other items held by the Customer to that they remain readily identifiable as the Supplier's property; **(c)** not remove, deface or obscure any markings on the Goods or products or their packaging which identifies the Goods or products as the Supplier's property; and **(d)** maintain those Goods or products in a safe and satisfactory condition and keep them insured against all usual risks for their full Price but, the Customer may resell on an arm's length basis or use any Goods or products in the ordinary course of its business.

8.4 The Customer's right of possession of any Goods or products in respect of which title has not passed to it shall immediately end in the event that the Customer suffers any Insolvency Event and the Customer shall notify the Supplier immediately should it suffer any Insolvency Event and shall also inform any receiver, manager, administrative receiver or similar who may be appointed with respect to any assets of the Customer that those Goods or products belong to the Supplier and are not assets belonging to the Customer.

8.5 The Customer shall allow the Supplier or its authorised representatives on request access any premises where any Goods or products in respect of which title has not passed to the Customer may be stored (or in the case of any premises not under the control of the Customer, shall procure that such access is granted for the Supplier or its authorised representatives) for the purposes of inspecting those Goods or products and verifying the compliance by the Customer with its obligations under Clause 8.3 and/or where the Customer's right of possession of those Goods or products has ended, for the purposes of recovering those Goods or products.

8.6 Save where any Goods are manufactured or Services performed in accordance with designs, specifications or other instructions provided to the Supplier by or on the behalf of the Customer the Supplier retains ownership of all intellectual property rights subsisting or capable of subsisting in any Goods or Services. Other than the limited right for the Customer to use any Goods or Services for the purposes for which they are designed, the supply of Goods and the performance of Services shall not act so as to transfer ownership of (or any right to use) any intellectual property rights subsisting or capable of subsisting in the Goods or Services in question.

## **9 LIMITATIONS AND EXCLUSIONS ON LIABILITY**

9.1 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of each Contract shall be read as subject to this Clause 9.1 and no provision of any Contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.

9.2 Subject at all times to Clause 9.3, the maximum liability of the Supplier to the Customer for all claims under any Contract howsoever arising (including under any indemnity) shall be limited in aggregate to Price actually paid by the Customer to the Supplier under the Contract in question.

9.3 The Supplier shall not be liable (whether under the terms of any Contract under any indemnity or otherwise) for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not the Supplier was aware or had been made aware (or ought reasonably to have been aware) at the time of the relevant Contract being formed of the risk that such loss or damage might occur.

9.4 The Supplier shall not be liable for any failure or delay in complying with any of its obligations under any Contract in the event that the failure or delay in question is attributable to any Force Majeure Event.

9.5 The Customer shall indemnify the Supplier on demand for all loss, damage, costs and expenses which may be suffered or incurred by the Supplier as a result of any third party making any claim against the Supplier in connection with the Supplier having followed or complied with any designs, specifications or other instructions provided to the Supplier by or on the behalf of the Customer.

## **10 INSOLVENCY AND TERMINATION**

10.1 If the Customer: **(a)** becomes subject to any Insolvency Event; **(b)** should the Supplier reasonably believe that the Customer is about to become subject to any Insolvency Event and notifies the Customer of such belief in writing; and/or **(c)** should any amount due to be paid by the Customer to the Supplier under any Contract be overdue then the Supplier may in any such case (and without prejudice to any other rights or remedies available to it whether under any Contract or otherwise) suspend without liability any or all further deliveries of Goods or performance of any Services under any or all Contracts and/or terminate any outstanding Contracts in either case, without liability to the Customer.

10.2 The Supplier may terminate any or all outstanding Contracts in the event that the Customer is in breach of any of its obligations under any Contract and, in the case of a breach which is capable of remedy, the Customer fails to remedy the same within 5 days of receipt of notice from the Supplier requesting it to do so.

10.3 Termination or expiry of any Contract shall not affect the continuing in force or coming into force of any provision of a Contract which, whether expressly or by implication is to survive termination or expiry.

## **11 GENERAL**

11.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.

11.2 Whilst the parties may make operational communications via email, formal notice may not be served via email.

11.3 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.

11.4 Each Contract represents the entire agreement between the parties relating to the supply of the Goods or Services in question and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.

11.5 Save only to the extent as may be specifically provided for otherwise under these Conditions, no variation or amendment of any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.

11.6 The Customer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Supplier. The Supplier may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Customer.

- 11.7 The Supplier may sub-contract the performance of any of its obligations under any Contract without the prior consent of the Customer or the need to give notice but shall remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of the Supplier itself under the applicable Contract.
- 11.8 Any Supplier group companies shall be entitled to rely upon the benefit of any Contract and to enforce any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, a person who is not a Party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 11.9 If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.
- 11.10 The failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or remedy or any other right or remedy.
- 11.11 These Conditions and each Contract and any dispute or claim arising out of or in connection either of those or their subject matter or formation (including any non-contractual disputes or claims) shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.