

Purchase Order Terms and Conditions

Version 1.0 June 2019

These are the terms and conditions (**Conditions**) on and subject to which the Supplier named on the purchase order accompanying these Conditions (**Purchase Order**) agrees to supply the member of the Moat group of companies named on the Purchase Order (further details of which can be found under “Corporate structure” here moat.co.uk/about-us/executive-team) whose principal offices are at Mariner House, Galleon Boulevard, Crossways, Dartford Kent DA2 6QE UK (**Moat**) with the goods and/or services specified in the Purchase Order (**Goods** or **Services**) in consideration for payment by Moat of the sums specified in the Purchase Order. Words or expressions stated in bold shall denote defined terms used throughout these Conditions and references in these Conditions to “**writing**” or “**written**” shall include email but not fax.

The term “**Parties**” in these Conditions shall mean Moat and the Supplier and “**Party**” shall mean either one of them.

The term “**Business Day**” in these Conditions means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1. BASIS OF CONTRACT

- 1.1 The Supplier’s quotation constitutes an offer by the Supplier to sell the Goods and/or provide the Services to Moat.
- 1.2 Moat shall be deemed to accept the Supplier’s offer, and a contract shall come into existence between the Parties in accordance with these Conditions, upon Moat issuing a Purchase Order to the Supplier (**Contract**). Performance by the Supplier of its obligations under these Conditions shall not entitle the Supplier to claim any payment for the Goods and/or Services where a Purchase Order has not been issued by Moat.
- 1.3 If there is conflict between these Conditions and any special conditions attached to the Purchase Order, then the latter shall take precedence.
- 1.4 Where, at the date of the Purchase Order, there is already a signed or sealed contract in place between the Parties for the Goods and/or Services that are the subject of the Purchase Order then the terms of such contract (and not these Conditions) shall apply to the supply of the Goods and/or Services.
- 1.5 Only Purchase Orders sent by email from an email address ending “@moat.co.uk” shall be valid unless Moat agrees otherwise.
- 1.6 These Conditions apply to the exclusion of any other terms or conditions that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or any course of dealing between the Parties.
- 1.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2. SUPPLY OF GOODS AND SERVICES

- 2.1. The Supplier acknowledges and agrees that it is responsible for obtaining, reviewing and investigating any information necessary for the performance of its obligations under the Contract.
- 2.2. The Supplier shall notify Moat of any assumptions and/or dependencies which must be met for the fulfilment of the Supplier's obligations under the Contract and Moat shall not be liable for the Supplier's failure to identify the same nor shall the Supplier be relieved from performing its obligations as result of such failure.
- 2.3. The Supplier warrants to Moat that:
 - a) it has full capability, capacity, authority and all necessary consents to perform this Contract; and
 - b) all personnel and sub-contractors used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform
- 2.4. Conditions relating to the Goods
 - a) The Goods shall be delivered to the address specified on the Purchase Order or notified to the Supplier by Moat (**Delivery Location**), at the time and date(s) specified in the Purchase Order unless otherwise expressly agreed by the Parties. A delivery note must accompany the Goods and specify the type and quantity of Goods delivered and the Purchase Order number.
 - b) Goods shall not be delivered by instalments without Moat's consent or unless otherwise specified on the Purchase Order. If delivered by instalments, the Goods may be invoiced and paid for separately. Failure to deliver any instalment on time or at all or any defect in an instalment shall entitle Moat to the remedies below.
 - c) Delivery of the Goods shall be completed once the Goods have been unloaded at the agreed location (**Delivery**).
 - d) Moat will be deemed to have accepted the Goods 10 Business Days from Delivery unless it gives notice to the Supplier under clause 3. Moat's signature on any delivery note is evidence only of the number of packages received and not evidence of acceptance of the Goods. Acceptance under this sub-clause (d) of the Goods shall not affect any rights or remedies that Moat may have under this Contract (or otherwise).
 - e) The Supplier warrants that the Goods (i) will be sold to Moat with valid and unrestricted title; (ii) are of satisfactory quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by Moat; (iii) are free from defects in design, materials and workmanship and will remain so for the longer of 12 months or any manufacturer's warranty period; (iv) comply with all applicable statutory and regulatory requirements; and (v)

correspond with their description and any applicable specification referred to in the Purchase Order.

- f) To the extent that the Goods are to be installed by the Supplier, the Supplier shall install the Goods in a good and workmanlike manner and make good any damage caused as a result of installation. The Supplier shall test and inspect the Goods following installation and notify Moat once installation has been completed. Moat shall have accepted the Goods after completion of installation, provided Moat has not exercised in writing any of the remedies below.
- g) Title and risk in the Goods shall pass to Moat on Delivery of the Goods at the Delivery Location (where the Supplier is not to install the Goods) or upon acceptance of the Goods in accordance with clause 2.3(f) (where the Supplier is to install the Goods).

2.5. Conditions relating to the Services

- 2.6. The Supplier warrants that the Services will (i) conform to Moat's requirements made known to the Supplier; (ii) conform to specifications and/or acceptance criteria (if any) set out in the Purchase Order (iii) be performed with that standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all applicable statutory and regulatory requirements.
- 2.7. The Supplier shall perform the Services in accordance with any timetable notified to the Supplier by Moat in writing.
- 2.8. Unless agreed otherwise in writing, the Supplier shall provide all equipment, consumables and other items required to provide the Services.
- 2.9. Any defects, deficiencies or other faults in the delivery of the Services which become apparent within twelve (12) months of the supply of the Services which are due to the erroneous execution of the Services shall be made good by the Supplier at no cost to Moat.

3. REMEDIES

- 3.1 If the Goods and/or Services are not delivered on the date they are due as referred to in clause 2.4(a) and/or clause 2.5(b), or do not comply with the warranties in clauses 2.4 or 2.5, Moat shall, without limiting any other remedies available to it, have the right to any one or more of these remedies:
 - a) Terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
 - b) reject the Goods and/or Services in full or in part and in the case of Goods, return them at the Supplier's own risk and expense;
 - c) require the Supplier to repair or replace the rejected Goods or re- perform the Services without further cost to Moat;

- d) refuse to accept any subsequent supply of the Goods and/or Services;
 - e) where Moat has paid any sums in advance for the Goods and/or Services, to require such sums to be refunded by the Supplier; and/or
 - f) recover from the Supplier any costs and expenses reasonably incurred by Moat in procuring replacement Goods and/or substitute Services which are substantially similar to those to be provided by the Supplier.
- 3.2 These Conditions apply to any repaired or replacement Goods and/or Services provided by the Supplier.
- 3.3 Any repaired and/or replaced Goods and/or Services are deemed to be warranted for the longer of 12 months or the manufacturer's warranty period.

4. INVOICING AND PAYMENT

- 4.1 The amounts specified on the Purchase Order represent the full and exclusive remuneration and include every cost and expense of the Supplier in respect of the supply of the Goods and/or Services (including packaging, delivery, installation, import duties and taxes where applicable).
- 4.2 The Supplier may invoice Moat for Goods supplied on or at any time after Delivery and for Services provided on or at any time after completion of the provision of the Services. Each invoice must correspond with the amount and currency specified on the Purchase Order and quote the Purchase Order number.
- 4.3 Purchase invoices to Moat must be sent to the following email address: purchase.ledger@moat.co.uk Moat will consider and verify each invoice in a timely manner with a view to confirming whether each invoice is valid and undisputed. Moat shall pay each invoice in full and in cleared funds within 30 days from the date on which it determines each invoice to be valid and undisputed.
- 4.4 All fees and charges exclude VAT which Moat shall, upon receipt of a valid VAT invoice from the Supplier, pay in addition.
- 4.5 If Moat fails to make any payment due under this Contract by the due date for payment, Moat shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Moat shall pay the interest together with the overdue amount.
- 4.6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Moat in order to justify withholding payment of any such amount in whole or in part. Moat may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

5. CANCELLATION AND CHANGES IN REQUIREMENTS

- 5.1 Without prejudice to any other provision of the Contract, Moat may terminate the Purchase Order and the Contract in whole or in part at any time before delivery of the Goods or full and complete performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work in relation to the Purchase Order and the Contract.
- 5.2 Where Moat exercises its rights under clause 5.1, Moat will pay such fees or charges for Goods which have been delivered or which are in transit or Services which have been performed together with the costs of materials which the Supplier has purchased to fulfil its obligations, provided they cannot be used for other customers or returned to the supplier of those materials for a refund.
- 5.3 Moat shall not be liable to the Supplier for any loss of anticipated profits or any indirect or consequential loss suffered by the Supplier arising as a result of cancellation pursuant to clause 5.1.
- 5.4 Moat may from time to time notify the Supplier of any change to Moat's requirements under a Purchase Order. The Supplier shall use its best endeavours to accommodate any such changes to the requirements of Moat including re-sequencing and re-programming the Goods and/or Services at no cost to Moat. If the Supplier has used best endeavours to the satisfaction of Moat but such re-sequencing and re-programming is not possible without the Supplier incurring additional material costs then the Supplier shall be entitled to payment for any such additional material costs incurred as a result of any such changes. The amount of such additional costs is to be agreed between Moat and the Supplier in writing prior to the Supplier undertaking any changes.

6. TERMINATION

- 6.1 Moat may terminate this Contract immediately by written notice if the Supplier:**
- a) commits an irremediable material breach of any of its obligations under these Conditions;
 - b) commits a remediable material breach of any of its obligations under this Contract and fails to remedy that breach within a period of 10 Business Days of receiving written notice of such breach by Moat; or
 - c) becomes insolvent or any similar insolvency event occurs, or action or proceeding is taken to manage the affairs of or wind up the Supplier.
- 6.2 Termination of this Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination.
- 6.3 Moat shall not be liable to the Supplier for any loss of profits, loss of contracts or other costs, losses and/or expenses incurred by the Supplier as a result of or in connection with termination pursuant to this clause 6.

7. LIABILITY AND INSURANCE

- 7.1 Nothing in these Conditions shall exclude or limit liability for damage to property or for death or personal injury caused by a Party's negligence or wilful default or for any other matter for which liability may not be excluded or limited by law.
- 7.2 Moat's liability under this Contract shall not exceed the total value of the Goods and/or Services supplied under this Contract.
- 7.3 The Supplier's liability under this Contract shall not exceed 200% of the total value of the Goods and/or Services supplied under this Contract or the maximum sums assured under clause 7.6 below, whichever is greater.
- 7.4 Neither Party shall be liable to the other for any indirect, special or consequential loss or loss of turnover, profits, business opportunities or anticipated savings (whether direct or indirect).
- 7.5 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 7.6 The Supplier shall take out and maintain public and product liability insurance (to include product liability) in the sum of at least five million pounds (£5,000,000) where Goods are supplied or, where Services are to be provided, either professional indemnity insurance or other appropriate insurance to cover the principal risks associated with the type of Services being provided, in the sum of at least one million pounds (£1,000,000).

8. SUBCONTRACTING

- 8.1 The Supplier shall not enter into any contract with any third party whereby that third party agrees to perform any of the Supplier's obligations in relation to the Goods and/or Services (**Sub-Contract**) without Moat's prior written consent and where Moat gives consent to any Sub-Contract, the Supplier shall:
- a) be responsible for the acts or omissions of its subcontractors as though they are its own; and
 - b) be liable to Moat for any costs, losses, damages or expenses suffered or incurred by Moat arising out of or in connection with any act or omission of its subcontractors.
- 8.2 The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to consider and verify each invoice received from its subcontractors in a timely manner with a view to confirming whether each invoice is valid and undisputed and to pay each invoice received from its subcontractors within a specified period not exceeding 30 days from the date on which the Supplier determines each invoice to be valid and undisputed.
- 8.3 The Supplier shall pay each invoice received from its subcontractors within 30 days from the date on which the Supplier confirms each invoice to be valid

and undisputed and at Moat's request, the Supplier shall provide Moat with evidence of compliance with this clause 8.

9. INTELLECTUAL PROPERTY

- 9.1 In this Contract '**Intellectual Property Rights**' mean patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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, 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.
- 9.2 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- a) provided to the Supplier by Moat shall remain Moat's property absolutely;
 - b) prepared by or for the Supplier specifically for Moat in relation to the performance of the Contract shall belong to Moat.
 - c) pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to Moat insofar as it is necessary for Moat to exercise its other rights under the Contract. Such a licence shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.
- 9.3 The Supplier indemnifies Moat against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against Moat for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the performance of this Contract by the Supplier save where such infringement or alleged infringement is caused by any act or omission on the part of Moat.

10. HAZARDOUS GOODS AND SAFETY

- 10.1 Where access to Moat's premises is required by the Supplier to perform its obligations under this Contract, the Supplier and all the people employed or otherwise engaged by it (including but not limited to sub-suppliers), shall throughout the duration of this Contract comply fully with the requirements of the Safety Legislation and with all those other policies and procedures in connection with the operation of Moat's business including but not limited to the reasonable requirements of Moat's security and health and safety procedures and other reasonable instructions of any of Moat's representatives appointed in respect of the works at Moat's premises.
- 10.2 For the purpose of this clause, "**Safety Legislation**" means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with

all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999, the Construction Design Management Regulations 2007 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on the UK) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the provision of Goods and/or performance of Services and the health and safety of the users of such goods and equipment.

10.3 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to Moat on or before Delivery with all data (in English) necessary to allow Moat to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Safety Legislation.

10.4 Unless specifically agreed with Moat, the Goods shall not contain asbestos.

11. DATA PROTECTION

11.1 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 2018 which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be undertaken in full compliance with the relevant requirements of the Data Protection Laws..

11.2 The provisions of this clause 11 shall extend to sub-contractors and the Supplier shall ensure compliance with these requirements herein stated.

11.3 The Supplier shall process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Contract and in accordance with Moat's instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.

11.5 The Supplier shall promptly comply with any request from Moat requiring the Supplier to amend, transfer or delete the Personal Data.

11.6 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of Moat.

11.7 The Supplier shall promptly inform Moat if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable or if the Supplier becomes aware of any unauthorised or unlawful processing. The Supplier will restore such Personal Data at its own expense.

- 11.8 The Supplier shall notify Moat within 2 Business Days if it receives a request from a Data Subject for access to that person's Personal Data.
- 11.9 The Supplier shall provide Moat with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 11.10 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of Moat or as provided for in this Contract.
- 11.11 The Supplier agrees to indemnify and keep indemnified and defend at its own expense Moat against all costs, claims, damages or expenses incurred by Moat or for which Moat may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 11.
- 11.12 In this clause 11 the terms **“Data Subject”**, **“Personal Data”**, **“Data Controller”**, **“processed”**, **“process”** and **“processing”** shall have the meanings given in the relevant Data Protection Laws.
- 11.13 For the purposes of this clause 11 the term **“Data Protection Laws”** shall mean the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof.

12. GENERAL PROVISIONS

- 12.1 Confidentiality: The Supplier undertakes that it shall not at any time disclose to any person (other than to those of its personnel who need to know such information for the performance of the Supplier's obligations under this Contract or as may be required by law or a court of competent jurisdiction) any confidential information concerning the business, affairs, customers, clients or suppliers of Moat and shall not use such confidential information for any purpose other than to perform its obligations under this Contract.
- 12.2 Force majeure: Neither Party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under this Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a continuous period of 30 days, the Party not affected may terminate this Contract by giving written notice to the other Party.

- 12.3 Assignment and other dealings: Moat may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract without the Supplier's consent being required. The Supplier may not assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract without Moat's prior written consent.
- 12.4 Severance: If any court or competent authority finds that any provision or part-provision of this Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 12.5 Amendment: No amendment to this Contract will be effective unless recorded in writing and signed by an authorised representative of the Supplier and an authorised representative of Moat.
- 12.6 Waiver and Cumulative Remedies: (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.7 Third party rights: A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.8 Notices: Any notice, request, instruction or other documentation to be given under the Contract shall be delivered or sent by first class post or by electronic mail to the address of the other Party set out in the Purchase Order (or such other address as the other may have notified the first Party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.
- 12.9 Modern Slavery: The Supplier shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but limited to the Modern Slavery Act 2015 and shall not in any circumstances engage in, promote or otherwise support child labour, human trafficking or any other means of exploitation. The Supplier shall take all reasonable steps to monitor and manage its own direct supply chain and sub-contractors' compliance with all anti-slavery and human trafficking laws, statutes and regulations from time to time in force.

If requested by Moat, the Supplier shall demonstrate effective implementation of its policies and procedures in relation to equality, diversity, human rights and modern slavery and take specific action to make any necessary changes.

- 12.10 Disputes: If there is a dispute between the Parties concerning any matter arising from or in connection with the Contract, the Parties will use reasonable endeavours to settle the matter in accordance with the following dispute resolution procedure: (a) any dispute which has not been resolved between the Parties within fourteen (14) days of the matter being raised by one to the attention of the other, may be escalated by either Party to a member of the senior management team of the other Party, by notice in writing; (b) if the dispute has not been resolved within fourteen (14) days of a notice under (a), the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR notice**) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR notice; (c) escalation of a dispute or the commencement of a mediation will not prevent the Parties commencing or continuing court proceedings at any stage.
- 12.11 No partnership or agency: Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other party.
- 12.12 Governing law and jurisdiction: This Contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 12.13 Brexit: For the purposes of this Clause 12 the term “**Brexit**” means that during the term of this Contract the UK leaves the European Union pursuant to Article 50 of the Treaty of Lisbon. In the event of Brexit, if either Party considers that the consequences of Brexit materially increase the costs of it performing its obligations under this Contract and/or reduces its income under this Contract in each case by 10% or more and/or otherwise adversely affects the benefit it derives from this Contract, such Party may give notice to the other of the same, and shall promptly supply such details and evidence of such consequences as may reasonably be required by the other Party. Within fourteen (14) days of the other Party receiving such notice, the Parties shall discuss in good faith and agree whether any amendments are required to this Contract as a result of Brexit, such that the provisions of this Contract maintain the same overall balance of obligations, benefits liabilities and risk between the Parties as applied at the date of this Contract. The Parties agree that the imposition of tariffs and other trade barriers relating to the subject matter of this Contract and not in existence at the date of the Contract shall be considered a change in the overall balance.