

## Standard Terms and Conditions – Goods & Services

### Date as specified on the Purchase Order

The Contract Documents constitute the entire agreement for the Goods & Services, to the exclusion of any other terms or conditions.

**The Guinness Partnership Limited** is a charitable Community Benefit Society No. 31693R registered in England and is a Registered Provider of Social Housing No. 4729 whose registered office is situated at 30 Brock Street, Regent's Place, London NW1 3FG which shall include its successors and permitted assigns. For clarity, reference to The Guinness Partnership Limited will also include its subsidiaries.

Only to the extent there is direct conflict between the Conditions and any specifically negotiated written terms negotiated between the Supplier and The Guinness Partnership Ltd (TGPL) which (i) are signed by both parties, and (ii) relate to the Goods & Services only, the provisions of those specific terms shall prevail.

Unless otherwise agreed in writing and signed by TGPL any Goods and Services provided shall be taken as conclusive acceptance of the terms set out in this Contract.

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### 1. Definitions and interpretation

In the Contract (as defined below) the following words and expressions shall have the following meanings, except where the context otherwise requires.

#### 1.1. Definitions

**Companies Act** means the Companies Act 2006.

**Contract** means these Conditions and the Order.

**Conditions** means these Conditions of Contract.

**Delivery Date** means the date for delivery of the Goods as set out in the Order.

**Delivery Location** means the location for delivery of the Goods as set out in the Order or such other location as may be notified to the Supplier by TGPL.

**Delivery Restrictions** means the specific instructions set out in the Order regarding the delivery and off-loading of the Goods.

**European Standards** means a standard relating to the Goods in question adopted by a European standards organisation and made available to the general public.

**Goods** means the products set out in the Order.

**Insolvency Act** means the Insolvency Act 2000.

**Intellectual Property Rights** means all Intellectual Property Rights (including without limitation patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same.

**Late Payment Act** means the Late Payment of Commercial Debts (Interest) Act 1998.

**Legislation** means all laws, statutory instruments, regulations in force from time to time in the United Kingdom.

**Order** means a Purchase Order form issued pursuant to these Conditions.

**Order Price** means the amount so stated in an Order.

**Services** means the Services as set out in the Order.

**Supplier** means the person or persons, firm or company named on the Order and includes the Supplier's personal representatives, successors and permitted assignees.

**Working Day** means Monday to Friday inclusive but not including any public holiday.

### 1.2. Interpretation

1.2.1. The headings in these Conditions shall not be taken into consideration in the interpretation of the Contract.

1.2.2. Words used in the singular shall have the same meaning in the plural and vice versa.

1.2.3. References in these Conditions to clauses shall, unless otherwise stated, be treated as references to clauses in these Conditions.

1.2.4. References to any statute or statutory provision shall include a reference to any modification, extension or re-enactment of it for the time being in force.

### 2. The Goods and Services

2.1. The Supplier will supply the Goods and Services to TGPL in accordance with the Order issued pursuant to the Conditions. There is no guaranteed minimum value or number of Orders.

2.2. In respect of performance of the Contract by the Supplier, time shall be of the essence and subject to Clause 2.6 no extension to the date and/or time for delivery of the Goods and performance of the Services specified in the Order shall be permitted without the written consent of TGPL.

2.3. The quantity, type and price of the Goods and Services, plus any particular requirements in relation to the Goods and Services, shall be as set out in the Order.

2.4. The Supplier warrants that:

2.4.1. The Goods and Services will correspond to the type, quantities, descriptions and particular requirements (if any) contained in the Order and the Goods shall be fit for the purpose of their intended use. To the extent that such description is incomplete or insufficient the Supplier warrants that the Goods will comply with all applicable

European Standards and warrants that in procuring, processing (if necessary), loading, delivering and off-loading the Goods it will exercise all reasonable skill, care and diligence to be expected of an experienced supplier of such Goods;

2.4.2. The sale of the Goods and Services and TGPL's use of them will not breach any Intellectual Property Rights and the Supplier shall indemnify TGPL against any loss in relation to any such breach of Intellectual Property Rights; and

2.4.3. The Goods and Services and the Supplier's actions in performing the Contract will comply with all relevant Legislation.

2.5. The Supplier shall keep a complete and up to date point in time record of the Goods supplied pursuant to the Contract and all other Goods supplied to TGPL pursuant to other contracts and will provide this information to TGPL within three (3) Working Days of such a request from TGPL.

2.6. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Goods and Services for more than two weeks, TGPL shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

2.7. The Supplier undertakes to TGPL that:

2.7.1. it is competent to carry out the Services;

2.7.2. it has allocated and shall continue to allocate sufficient time and resources to enable it to properly carry out the Services; and

2.7.3. it shall not arrange for or instruct a worker to carry out Services unless the worker is competent or under the supervision of a competent person.

### **3. Delivery of the Goods**

3.1. The Supplier shall arrange for the Goods to be procured, processed (if necessary), loaded, delivered to and off-loaded at the Delivery Location in the quantity set out in the Order and in accordance with the Contract and delivery shall be on the Delivery Date set out in the Order in accordance with the Delivery Restrictions.

3.2. Pending delivery of the Goods to the Delivery Location, the Goods shall be at the sole risk of the Supplier. The Supplier shall ensure that all loads are well secured and protected so as to prevent any nuisance or loss of Goods while in transit.

3.3. Upon completion of the off-loading of the Goods and upon TGPL being reasonably satisfied that

the Goods comply with the requirements of the Contract, TGPL shall sign the Supplier's standard form acknowledging receipt in respect of such Goods. TGPL shall be under no obligation to sign an acknowledgement of receipt for any Goods not specified in the Order and insofar as the Goods are to be paid for by weight, authenticated weight tickets must be provided for the acknowledgement to be signed.

3.4. The acknowledgement of delivery in no way limits or excludes the liability of the Supplier under the Contract.

3.5. TGPL shall, in acknowledging delivery, act fairly and objectively. If TGPL believes that the delivery is not in accordance with the Contract it shall set out its reasons in writing to the Supplier by the end of the next Working Day after delivery of the Goods. Following receipt of TGPL's reasons, the Supplier may refer the issue to Clause 8. For the avoidance of doubt, the remainder of the Contract will continue, subject to Clause 9, while the procedure in Clause 8 is followed.

3.6. If stated in the Order, the Supplier is responsible for the provision of all equipment required for the processing (if necessary), loading, delivery and off-loading of the Goods.

### **4. Defects**

The Supplier will make good by replacement any defects in the Goods and shall bear any reasonable expenses incurred by TGPL as a consequence of such defects including, where necessary, the costs of opening up or dismantling of other works or assemblies to permit such replacement and of re-assembly and making good after replacement and testing to TGPL's reasonable satisfaction subject to TGPL taking reasonable steps to mitigate the amount and cost of such works. Failure by the Supplier to make good any such defect (save for such minor defects as do not affect the intended use of the Goods) shall entitle TGPL to refuse to acknowledge delivery or, if delivery has been acknowledged, to invalidate such acknowledgement.

### **5. Title**

Full and unencumbered title to the Goods shall pass to TGPL on the date of acknowledgement of delivery relating to such Goods and such title shall be free from any charge, lien, pledge or encumbrance of any nature either in favour of the Supplier or any other party.

### **6. Price and Payment**

6.1. The Order Price shall be as stated in the Order and shall include the following:

6.2. Cost of the Goods and Services; and

6.2.1. cost of transport of the Goods to the Delivery Location including all associated charges (including but not limited to loading and off-loading charges); and

6.2.2. cost of insurance of the Goods (up to the date that TGPL acknowledges delivery of the Goods) and testing of the Goods; and

- 6.2.3. any costs, expenses or charges incidental to the performance of the Contract within or outside the United Kingdom.
- 6.3. Payment for the Goods and Services or any portion thereof shall be made 30 days from the date of the invoice and TGPL shall be under no obligation to make any payment to the Supplier for Goods if delivery of those Goods has not been acknowledged or has been invalidated pursuant to Clause 4.
- 6.4. If TGPL fails to pay any amount due in accordance with Clause 6.2, TGPL shall pay, in addition to the amount overdue, simple interest on that amount for the period of default calculated at four per cent (4%) over the Base Rate of the Bank of England which is current at the date the payment became overdue and the parties agree that this is a substantial remedy for the purpose of the Late Payment Act.
- 8.4. If the nominees have been unable to resolve the disagreement within twenty-eight (28) Working Days of the notice commencing the mediation, Clause 8.5 will apply.
- 8.5. Where Clause 8.4 applies, either party may forthwith commence proceedings in the courts of England and Wales.

## 9. Termination

### 9.1. Termination by TGPL

TGPL may by notice terminate the appointment of the Supplier under the Contract if:

- 9.1.1. the Supplier without reasonable cause fails to proceed diligently with the performance of the Contract or wholly suspends the performance of the Contract; or
- 9.1.2. the Supplier shall become bankrupt, or make a composition or arrangement with its creditors, or make a proposal in respect of its company for a voluntary arrangement for a composition of debts or a scheme of arrangement to be approved (in accordance with the Companies Act or Insolvency Act), or have an application made under the Insolvency Act in respect of its company to the court for the appointment of an administrator, or have a winding up order made, or (except for the purposes of amalgamation or reconstruction) have a resolution for voluntary winding up passed, or have a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or have an administrative receiver as defined in the Insolvency Act appointed, or have possession taken by or on behalf of the holders of any debenture secured by a floating charge; or
- 9.1.3. the Supplier shall fail to comply with any term or condition of the Contract. Provided that the appointment of the Supplier shall not be determined under Clauses 9.1.1 or 9.1.2 unless the Supplier has continued the default for ten (10) Working Days after receipt of a notice from TGPL specifying such default.

9.1.4. TGPL may at any time and without having to give any reason terminate the Supplier's engagement in relation to the Goods and Services by not less than ten (10) days written notice.

9.1.5. In the event of TGPL terminating the appointment of the Supplier under this Clause 9.1 the Supplier shall immediately vacate the Delivery Location and TGPL shall be under no obligation to make further or additional payments to the Supplier, provided always that such termination shall be without prejudice to any other rights or remedies which the parties may possess.

### 9.2. Termination by the Supplier

## 7. Assignment and Sub-Contracting

- 7.1. The Supplier shall not assign the Contract or any part thereof or any benefit or interest in the Contract without the prior written consent of TGPL.
- 7.2. TGPL shall be able to assign the Contract or any part thereof or any benefit or interest in the Contract to any company within TGPL's Group without the consent of the Supplier, subject to a maximum of two such assignments. Any other assignment shall be subject to the prior written consent of the Supplier (which shall not be unreasonably withheld or delayed).
- 7.3. The Supplier shall not sub-let the performance of the whole of the Contract. The Supplier shall not sub-let any part of the Contract without the prior consent of TGPL and such consent if given shall not relieve the Supplier from any liability or obligation under the Contract and it shall be responsible for the acts, defaults and neglects of any sub-supplier, its agents, servants or workmen.

## 8. Disputes

- 8.1. In the event of a dispute between the parties or any action which could result in a dispute or difference arising between them, the parties agree first to try to settle the disagreement by mediation.
- 8.2. The mediation shall be commenced by giving a written notice to the other party at the address given for that party in the Order (unless a different address is notified to the other party). The notice shall include a brief statement of the matter or matters which it is desired to settle by mediation and a brief statement of the relief or remedy sought.
- 8.3. The mediation will be carried out by nominees of TGPL and the Supplier, who should preferably be directors of the parties not personally involved with the Contract.

- 9.2.1. The Supplier may by notice to TGPL terminate its appointment under the Contract if:
- 9.2.2. TGPL fails to make any payment due under the provisions of Clause 6.2 within three (3) months of the relevant payment date; or
- 9.2.3. TGPL or any person for whom it is responsible interferes with or obstructs the performance of the Contract; or
- 9.2.4. provided that the appointment of the Supplier shall not be determined under Clauses 9.2.1 or 9.2.2 unless TGPL has continued the default for ten (10) Working Days after receipt of a notice from the Supplier specifying such default.
- 9.2.5. In the event of the Supplier terminating its appointment pursuant to this Clause 9.2 TGPL shall pay to the Supplier, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of all items supplied pursuant to the Contract, provided always that the right of termination shall be without prejudice to any other rights or remedies which the parties may possess.

## 10. Intellectual Property Rights

- 10.1. The Supplier hereby grants to TGPL an irrevocable, royalty free licence to use and copy any documents and information produced by the Supplier or on the Supplier's behalf in connection with this Contract (the "Documents") for any purpose whatsoever connected with the Goods and Services. The licence shall survive termination of this Contract, carries the right for TGPL to grant sub-licences in similar terms and shall be transferable.
- 10.2. The Supplier hereby warrants that TGPL's (and its transferees and sub-licencees') use of the Documents shall not infringe the intellectual property rights of any third party and indemnifies TGPL against any losses, claims, expenses or similar which it incurs as a result of the Supplier's breach of this clause 10.2.

## 11. Indemnity and Insurance

- 11.1. Without prejudice to any rights of TGPL, the Supplier shall indemnify TGPL against all matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, statement (whether in writing or otherwise), breach of contract or negligence of the Supplier, its sub-contractors, employees or agents in the course of or in connection with the Contract.
- 11.2. The Supplier shall effect and maintain during the Contract public and employer's liability and other insurances with a reputable company necessary to cover the risks contemplated by the Contract and shall at the request of TGPL produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due under such policies. Public liability cover of at least £10 million shall be obtained, unless agreed otherwise with TGPL in writing.
- 11.3. The Supplier shall maintain professional

indemnity insurance at such level as is specified in the Order or, where no such level is specified, with a minimum limit of indemnity of £5 million in respect of each and every claim and without unusual or onerous conditions.

## 12. Confidentiality and Information

The Supplier shall keep in strict confidence all information provided by or on behalf of TGPL in connection with the Contract. The Supplier shall not disclose any such information save as required by law or to the extent that such disclosure is strictly required in order for the Supplier to fulfil its obligations to TGPL in relation to the Goods and Services. Where such disclosure is required, the Supplier shall ensure that any party to whom information is disclosed is subject to confidentiality obligations equivalent to those in this Clause 12. This Clause 12 shall survive termination of the Contract.

## 13. Third Party Rights

Nothing in this Contract shall confer any rights on any person which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

## 14. Waiver

14.1. 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.

14.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 15. Governing Law

The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Court.

## 16. Notices

All Notices shall be in writing and shall be validly served if delivered personally or sent by recorded delivery to the addresses of the parties set out on the Order.