

## GENERAL CONDITIONS (Version 11 – October 2014)

### Contract

These General Conditions will form part of any contract (“Contract”) to which they are expressed to apply. Unless otherwise stated capitalized expressions used in these General Conditions shall have the meanings ascribed to them in the Contract. The expression “Contract Personnel” means the Supplier's employees, subcontractors and agents (and their employees, subcontractors and agents) engaged in the performance of the Contract.

### Assignment and Subcontracting

The Supplier shall not assign or subcontract any part of the Contract or move any work from one country to another without first obtaining BT's written consent.

### Delivery

The Supplier shall deliver and/or perform Supplies to or at such address(es) and at such times as are specified in the Contract and/or by the Delivery Contact if one is appointed. If requested to do so, the Supplier shall give BT details of the weight and material composition of any packaging and/or batteries forming part of or accompanying Supplies.

### Compliance

The Supplier shall comply with (and where applicable shall ensure that Supplies and its subcontractors comply with):

- all applicable laws, regulations or by-laws of any relevant local or other authority as well as any BT site regulations that may be notified; and
- (and shall ensure that Contract Personnel comply with) BT's Anti-Corruption and Bribery Policies at <http://www.selling2bt.bt.com/Anti-CorruptionandBribery/index.htm> as though such policies applied to and had been adopted by the Supplier, and promptly provide to BT on request from time to time all information BT may reasonably require in respect of such compliance; and
- to the maximum extent permitted by any applicable law, BT's “Third Party Pre-Employment Checks Policy” at <http://www.selling2bt.bt.com/working/3rdpartyCheckPolicy/default.htm> and undertake checks at the appropriate level prescribed by that Policy of all Contract Personnel directly engaged in the performance of the Contract; and
- to the extent that the Supplier represents BT (or third parties may reasonably believe that the Supplier represents BT) in relation to the Supplier's performance of the Contract, “BT's business principles”, as set out in BT's publication “The Way We Work – a statement of business practice” at <http://www.btplc.com/TheWayWeWork> as though such principles (mutatis mutandis) applied to and had been adopted by the Supplier; and
- the requirements of the Contract and all relevant UK and international standards.

### Price

The price payable by BT for Supplies is as stated in the Contract. The price excludes VAT, but includes all royalties, licence fees or similar expenses arising from the use of any intellectual property and the delivery and, where applicable, off-loading of Supplies.

### Access to iSupplier

- The provisions of this General Condition shall apply only if the Supplier uses iSupplier (as defined in the General Condition headed “Payment and Invoicing”).
- The following expressions are used in this General Condition:
  - “Access” - interconnection with iSupplier and access to BT information.
  - “Authorised” – BT having approved Access as part of BT's authorisation process and the Supplier having a record of this authorisation.
  - “BT Security Contact” – Steve Hughes, BT Global Security Sourcing Manager, 01977 591640, or such other person whose details shall be notified by BT to the Supplier from time to time.
  - “Guide” – the latest applicable issue of BT's “A Guide to Information Security for Third Parties” at [http://www.selling2bt.bt.com/Downloads/thirdparty\\_guide\\_issue\\_FINAL.pdf](http://www.selling2bt.bt.com/Downloads/thirdparty_guide_issue_FINAL.pdf)
  - “Purposes” - the proper performance by the Supplier of its obligations under and in accordance with the Contract.
- BT allows (so far as it can and is able to do so) the Supplier, while the Supplier is Authorised, Access solely for the Purposes.
- In relation to Access, the Supplier shall (and, where relevant, shall procure that all contract Personnel) comply with the Guide and:
  - ensure each individual user has a unique user identification and password known only to such user;
  - ensure each individual receives appropriate security training in the use, handling and management of passwords and information;

- ensure that physical access to computer equipment having Access or storing or having access to BT information is password-protected to reflect the Supplier's obligations under the General Condition headed "Security of Information";
  - ensure onward bridging or linking to BT computer systems is prevented.
  - take all reasonable steps to ensure no viruses or malicious code (as the expressions are generally understood in the computing industry) are introduced to iSupplier and/or BT information;
  - not have or permit Access other than for the Purposes in accordance with the Contract;
  - take all reasonable steps to prevent unauthorised Access; and
  - notify BT immediately should any Contract Personnel move off this Contact, thus enabling BT to disable the access rights to systems and information.
- Any breach of this General Condition by the Supplier shall be deemed to be a material breach of the Contract and the Supplier indemnifies BT from and against any costs, losses, damages, proceedings, claims, expenses or demands incurred or suffered by BT which arise as a result of any such breach.
  - The Supplier shall inform the BT Security Contact immediately if it becomes aware of any actual or suspected unauthorised Access or misuse of iSupplier or BT information or breach of any of the Supplier's obligations under this General Condition.

### **Payment and Invoicing**

- In this General Condition, "iSupplier" means BT's Oracle iSupplier application, enabling, via the internet, the receipt of purchase orders, visibility and tracking of shipment receipting details, and invoice and payment data, including the secure transmission and storage of VAT invoices, without the delivery of paper invoices, by electronic means.
- If BT requires the Supplier to use iSupplier, the Supplier shall, following supply of all or (where agreed by BT in writing) each instalment of Supplies, submit its invoices using only iSupplier and agrees that BT may reject any invoice not so submitted.
- If BT does not require the Supplier to use iSupplier, the Supplier shall, following supply of all or as otherwise agreed by BT, send a valid VAT invoice in paper form to BT [insert relevant name of BT Line of Business] Accounts Payable to the BT address shown on the purchase order for the price of Supplies delivered in accordance with the Contract.
- Each invoice shall specify: its date; the correct BT and Supplier legal entities in accordance with the Contract; the VAT amount in sterling (and, if the agreed payment currency is other than sterling, the rate at which the VAT amount has been converted from the agreed payment currency to sterling in accordance with any then applicable HM Revenue & Customs requirements); the VAT Registration number; the VAT rate applicable, the Contract number; the order reference; line reference; the relevant BT item code(s) if appropriate; the correct price; the full description of the Supplies to which the invoice relates (as defined in the Contract); the portion of the Supplies for which payment is due and, if appropriate, the cumulative amount invoiced to date. The agreed payment currency and the Incoterm must be specified in relation to any non-UK transaction. Any discounts should be separately shown with a clear indication of what the discount is for plus information sufficient to comply with Inland Revenue and Customs & Excise requirements. If the agreed payment currency is other than sterling, the VAT amount shall be payable by BT to the Supplier in sterling notwithstanding such agreement. Where iSupplier is used, the Supplier shall ensure on each occasion that a pdf image of the tax invoice showing identical information to that inputted by the Supplier is attached to the iSupplier invoice record. The Supplier shall raise a separate invoice for each purchase order reference number. BT may reject any invoice if it is for multiple purchase order reference numbers or otherwise does not comply with these General Conditions.
- Unless otherwise expressly stated in the Contract, BT shall pay each due, valid and undisputed invoice on or before the first Monday (or, if that Monday is a public holiday, on the next day that is not a public holiday) after the expiration of 42 days from the date BT receives the invoice.
- Unless otherwise expressly stated in the Contract, payment shall not become due to the Supplier and the Supplier shall not submit invoices for payment until the Supplier has fully completed its obligations under and in accordance with the Contract.
- The Supplier shall submit invoices within one year of the date upon which the payment they relate to becomes due to the Supplier. BT shall have no liability to make payments in respect of invoices not so submitted.
- BT shall not be liable to the Supplier for or in connection with any failure or unavailability of iSupplier.

### **Guarantee**

The Supplier shall promptly at its own expense in the case of tangible Supplies:

- remedy (by, at BT's option, repair, replacement or full refund of the purchase price) defects in Supplies appearing within two years of delivery to BT which arise from faulty design, workmanship, materials or the Supplier's negligence and shall pay for their return carriage; and
- repair or replace (at BT's option) Supplies lost or damaged in transit before delivery to BT; and
- reimburse any costs and expenses incurred by BT in recovering and/or returning defective Supplies to the Supplier.

## **BT Items**

In relation to all items provided by BT to the Supplier and all items held by the Supplier which are or become BT's property ("BT Items"), the Supplier shall:

- return them to BT upon completion or termination of the Contract or earlier reasonable request by BT, keep them securely and in good condition, segregated and clearly marked as BT property and be fully liable for any loss of or damage to them;
- satisfy itself that they are adequate for the purpose for which they are being provided, and within 14 days of receipt notify BT of any defects or deficiencies;
- not, without the prior written consent of BT, use BT Items for any purpose other than as necessary for the performance of the Contract, or allow any third party to use or take possession of them;
- not have, and shall ensure that no Contract Personnel have, a lien on BT Items for any sum due and take all reasonable steps to ensure the title of BT and the exclusion of such lien are brought to the notice of all Contract Personnel dealing with any BT Items;
- if there is any threatened seizure of any BT Items, or if the Supplier (or any Contract Personnel in possession of such BT Items) is affected by any of the insolvency events detailed in the General Condition headed "Termination" (or the equivalent of any of these), notify BT immediately, draw to the attention of the relevant official that BT Items belong to BT and do not form part of the Supplier's assets and allow BT to enter the Supplier's premises or those of any Contract Personnel where BT Items are stored and take possession of them.

## **Title and Risk**

Without prejudice to BT's other rights, title in tangible Supplies passes to BT on the earlier of delivery or payment (including part payment) and risk in tangible Supplies is borne by the Supplier until delivery.

## **Transfer of Undertakings**

If Supplies include the provision of services, the Supplier indemnifies BT (and any successor supplier to the Supplier) against all claims and/or complaints by its employees in relation to their employment by the Supplier and against all claims, liability, demands, proceedings, costs and expenses arising as a result of any application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) or any similar or equivalent legislation ("TUPE Regulations"), such that BT and any successor supplier are each placed in no worse a position financially than they would have been had such claims, complaints and/or liability not existed. To the fullest extent permitted by law, the Supplier shall co-operate with (including by supplying such information as may reasonably be required) BT and/or any successor supplier in relation to any application or anticipated application of the TUPE Regulations in connection with the Contract.

## **Security of Information**

- Without prejudice to any obligations of confidentiality it may have, where the Supplier or Contract Personnel have access to BT's computer systems or to BT's information, the Supplier shall:
  - ensure such information is not disclosed to or accessed by Contract Personnel not directly employed by the Supplier without BT's prior written consent; and
  - keep (and ensure all relevant Contract Personnel keep) such information secure and confidential, act only on BT's instructions with respect to it, and comply with such further reasonable requirements from time to time of BT for the security of it; and
  - allow (and ensure that all relevant Contract Personnel allow) BT or its authorised representatives such access to premises, systems and records containing such information as is reasonably necessary to assess the Supplier's compliance with this General Condition.
- Any breach of this General Condition by the Supplier shall be deemed to be a material breach of the Contract.
- Without prejudice to BT's rights and remedies under the Contract, the Supplier shall at its own cost and expense take all steps necessary to restore the lost or corrupted information to the last back-up and/or terminate the unauthorised use of or access to the information to the extent it caused such loss, corruption or unauthorised use of the information.

## **Information and Audit**

The Supplier shall provide to BT (or its authorised representatives) (i) on request such information as BT shall from time to time reasonably require to assess and/or verify the Supplier's compliance with the Contract; and (ii) upon being given reasonable notice, access to the Supplier's premises for the purposes of accessing such information.

## **Confidentiality**

- The Supplier and BT shall each keep confidential all information obtained from the other ("Confidential Information") and shall not without the other's prior written consent disclose or use any Confidential Information except as necessary for properly performing the Contract.

- This obligation to maintain confidentiality shall not apply to information which is: in the public domain otherwise than through a breach of the Contract; or already known to the recipient and not the subject of any obligation of confidentiality; or obtained by the recipient from a third party who is free to disclose it; or replicated by development independently carried out without access to or knowledge of Confidential Information.
- The Supplier shall ensure that any subcontractor used in relation to the Contract is bound by a provision in similar terms to this General Condition in relation to Confidential Information.

### **Intellectual Property**

BT shall exclusively own all new intellectual property rights created in the course of performing obligations pursuant to the Contract ("New IPRs"). Where New IPRs take the form of a tangible deliverable, such as software, documentation and the like, the Supplier shall deliver to BT upon demand and free of charge a full copy, including source code, of all New IPR. The Supplier hereby assigns to BT with full title guarantee all New IPRs, which shall vest in BT absolutely as and when they come into existence, and will execute any additional documents required to perfect such assignment. The Supplier hereby grants to BT a non-exclusive irrevocable licence free of any payment, to copy, disclose, publish, including to the extent reasonably anticipated hereunder sell and use (with the right to sublicense any such rights) the Supplies without restriction. The Supplier warrants that it has the right and power to grant to BT the licences granted under this Contract.

### **Software**

With respect to all software delivered or required to be delivered under the Contract the Supplier hereby grants to BT free of all additional charges, a non-exclusive worldwide irrevocable right to use and exploit as reasonably required pursuant to the Contract and warrants that it will be free on delivery from any viruses, worms, trojans, malware, adware and forms of electronic repossession.

### **Force Majeure**

- Neither party shall be liable for any delay in its performance of the Contract directly caused by any event beyond its reasonable control provided it has first given the other party written notice within 7 days after becoming aware that the delay was likely to occur.
- BT may terminate Contract immediately in whole or in part by written notice to the Supplier and have no liability for the whole or part so terminated if the Supplier's delay exceeds 28 days.
- The provisions of this General Condition do not affect any right to terminate the Contract under the General Condition headed "Termination".

### **Indemnity**

The Supplier indemnifies BT against all claims, liability, demands, proceedings, costs and expenses arising:

- in respect of loss or damage to any property, or death or personal injury of, any person arising as a result of any act or omission of the Supplier, its employees, agents or subcontractors (or their employees or agents) in relation to the Contract except to the extent such loss, damage, death or personal injury is caused by the negligence of BT; or
- under Part 1 of the Consumer Protection Act 1987 in relation to Supplies; or
- in respect of any claim or allegation that Supplies or BT's use, possession, deployment of them breaches any obligation of confidence or infringes any intellectual property right (including without limitation, patents, copyright, registered designs, design rights, database right and trade secrets).

### **Limitation of Liability**

- Subject to the last paragraph of this General Condition, neither party shall be liable to the other under or in connection with the Contract for any indirect or consequential loss or damage.
- Subject to the last paragraph of this General Condition, the liability of either party to the other under or in connection with the Contract shall not exceed the greater of either (i) one million pounds (£1,000,000); or (ii) 125% of the total price of all Supplies supplied or to be supplied under the Contract.
- The preceding paragraphs of this General Condition shall not apply to the extent that liability cannot be limited or excluded by any applicable law or to loss or damage arising out of or in connection with:
  - death or personal injury; or
  - the wilful failure of either party to perform its contractual obligations; or
  - the General Conditions headed "Indemnity", "Transfer of Undertakings" and/or "Confidentiality".

### **Insurance**

- Supplier shall at its own expense take out and maintain with an independently regulated, financially secure and properly licensed insurer all insurances as are legally required and appropriate in respect of its obligations under the Contract on terms that are adequate and customary in the insurance market, including:

- Public liability insurance with limits of £5m per occurrence and unlimited in respect of the number of occurrences during any one insurance period;
- Employers' liability and/or workers' compensation insurance as required by relevant law;
- If Supplies include specialist or professional services, professional indemnity Insurance with limits of £2m per occurrence and all occurrences during any one insurance period. This insurance shall be maintained for a period of six years after the expiry of the Contract.
- All insurances should cover the vicarious liability of the Supplier for the acts or omissions of the Supplier's personnel and/or contractors and the public liability and employers' liability policies shall contain an indemnity to principal's clause in favour of BT.
- On request, the Supplier shall furnish to BT evidence to confirm that all insurance are compliant with the terms of the Agreement, failing which BT shall be entitled to arrange such coverage and to charge the Supplier with the cost thereof.
- The amounts specified above are minimum requirements and the Supplier shall be responsible for providing any additional coverage they may require and this General Condition shall not be deemed to limit in any way their liability under the Contract.
- The Supplier shall notify BT as soon as it is aware of any event occurring in relation to the Contract which may give rise to an obligation to indemnify BT under the Contract, or to a claim under any insurance required by the Contract.

### **Termination**

- Without prejudice to BT's other remedies, BT shall have the right to terminate the Contract forthwith, and to claim the additional cost of obtaining replacement supplies, if:
  - the Supplier commits a material breach or persistent breaches of the Contract and fails to remedy the breach within 10 days of receiving written notice to do so; or
  - the Supplier becomes insolvent, ceases or threatens to cease to trade, compounds with its creditors, commits an act of bankruptcy, or a bankruptcy petition or bankruptcy order is presented or made in relation to the Supplier; or has a receiver appointed, or a petition for an administration order presented or made: or a resolution or petition to wind up the Supplier is passed or presented (otherwise than for reconstruction or amalgamation) or the equivalent of any of these events occurs in any jurisdiction; or
  - the ownership or control of the Supplier is changed to (in BT's reasonable opinion) BT's detriment.
- If the Contract is terminated by BT as above, the Supplier shall co-operate with and provide such information as is reasonably required by BT to facilitate the smooth transition from the Supplier to another supplier.
- BT may at any time terminate the whole or any part of the Contract immediately. Where BT terminates the Contract under this paragraph and does not have any other right to terminate the Contract, the following shall apply:
  - BT shall, subject to the next subparagraph, pay the Supplier such amounts as may be necessary to cover its reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract in relation to Applicable Supplies (as defined below) prior to termination;
  - BT shall not pay for any such costs or commitments that the Supplier is able to mitigate and shall only pay costs and commitments that BT has validated to its satisfaction. BT shall not be liable to pay for any Applicable Supplies that, at the date of termination, BT is entitled to reject (including any Supplies which BT may have put into service) or has already rejected. BT's total liability under the preceding sub-paragraph above shall not in any circumstances exceed the price that would have been payable by BT for Applicable Supplies if the Contract had not been terminated;
  - In this paragraph "Applicable Supplies" means Supplies in respect of which the Contract has been terminated under this paragraph, which were ordered by BT under the Contract before the date of termination, and for which payment has not at that date become due from BT;
  - The preceding sub-paragraphs encompass the total liability of BT for termination pursuant to this paragraph, and BT shall be liable for no other costs, claims, damages, or expenses resulting from such termination.

### **General**

- In relation to its subject-matter, the Contract is the entire agreement between the parties and governs their relationship to the exclusion (to the extent permitted by law) of any other terms and conditions (other than those implied by law), including, without limitation, those upon which any quotation or tender response has been given to BT.
- The Contract is non-exclusive and does not restrict BT from purchasing any supplies from any third party.
- Unless otherwise expressly stated, BT is under no obligation to purchase any particular volume or value of Supplies. Any estimated value stated in the Contract is for administrative purposes only and does not constitute any commitment. Where BT has no initial commitment to purchase Supplies, the Contract shall be made in consideration of one pound payable by BT to the Supplier.
- No variation to the Contract shall have effect unless agreed by both parties in writing.
- No waiver by either party shall be effective unless made in writing.
- Any reference to any legislation or legislative provision in the Contract shall be construed as a reference to that legislation or provision as amended, re-enacted or extended at the relevant time.

- Each of the parties acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and in connection with the Contract does not have any remedy in respect of, any representation or other promise of any nature whatsoever other than as expressly set out in this Contract. Nothing in this Contract shall operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.
- A person who is not a party to the Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- The General Conditions headed "Compliance", "Guarantee", "Transfer of Undertakings", "Security of Information", "Access to iSupplier", "Confidentiality", "Intellectual Property" "Indemnity", "Limitation of Liability" and "General" shall survive the Contract.
- The Contract and any claims or disputes arising out of contractual and/or non-contractual obligations relating to or in connection with it shall be governed by and construed in accordance with the laws of England. The parties submit to the exclusive jurisdiction of the English courts in relation to contractual and/or non-contractual obligations.