



## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 20.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

**Customer:** the person or firm who purchases the Goods or Services or Goods and Services from the Supplier.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** deliverables set out in the Order produced by the Supplier for the Customer.

**Deposit:** any advance payment required by the Seller in advance of the Goods being provided.

**Force Majeure Event:** has the meaning given to it in clause 19.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names, goodwill and the right to sue for passing off 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.

**Order:** the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** Paterson Simons & Co Africa Limited registered in England and Wales with company number 00453843 and with its registered office at 4 The Offices, 10 Fleet Street, Brighton, East Sussex, BN1 4ZE, United Kingdom.

**Supplier Materials:** has the meaning given in clause 9.1(l).

**Warranty Period:** to the extent that no original equipment manufacturer's (OEM) warranty applies, has the meaning given in clause 5.3(a).

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) Unless otherwise stated, a reference to legislation or a legislative provision is a reference to it as amended or re-enacted in England and Wales. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) This Contract is drafted in the English language and in the French language. The English language version of this Contract and any notice or other document relating to this Contract, shall prevail if there is a conflict, except where the document is a constitutional, statutory or other official document.
- (e) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (f) A reference to **writing** or **written** excludes fax and email.

## 2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).



- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself shall be governed by reference to the law of England and Wales.
- 2.8 Any reference made to trade terms (such as **EXW**, **FCA**, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce.
- 2.9 Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date on which the Contract is entered into.
- 2.10 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.11 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

### **3. Goods**

- 3.1 Once this Contract has been entered into, the Customer is obliged to purchase the Asset for the Price. If the Customer subsequently changes its mind, fails to pay the Price and/or fails to take delivery of the Asset (in each case as required by this Contract), without limited its other rights and remedies, the Supplier shall be entitled to retain and the Customer shall forfeit any amounts already paid by the Customer to the Supplier and, further, in the event that any such amounts are insufficient to cover the Supplier's direct and/or indirect costs and losses, the Customer shall pay to the Seller on demand such further sum as is required to cover such additional costs and losses.
- 3.2 The Goods are described in the Goods Specification.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest,



penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.

- 3.4 The Supplier reserves the right to amend the Goods Specification if required by any relevant OEM requirement, and the Supplier shall notify the Customer in any such event.
- 3.5 If the parties have agreed that the Customer is entitled to inspect the Goods before shipment, the Supplier shall notify the Customer within a reasonable time before the shipment of the Goods are ready for inspection at the agreed location. Pre-inspection may incur additional charges, in addition to the price of the Goods.

#### **4. Delivery of Goods**

- 4.1 Unless otherwise agreed in writing, delivery shall be "Ex Works" (**EXW**).
- 4.2 Unless otherwise agreed in writing, the Supplier shall provide the documents (if any) indicated in the applicable Incoterm or, if no Incoterm is applicable, according to any previous course of dealing.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If thirty days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer



for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods. For the avoidance of doubt, nothing in this clause 4.6 shall impose any obligation on the Seller to return any Deposit received, either in whole or in part, to the Customer.

4.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered.

4.8 The Supplier may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. Unless otherwise agreed in writing, payment for all of the instalments shall be made in accordance with clause 10.4(a).

## 5. Quality of Goods

5.1 To the extent that the benefit of any warranties made by the OEM of the Goods to the Supplier can be assigned to the Customer, the Supplier shall, if requested by the Customer and at the cost of the Customer, assign them to the Customer. The provisions of this clause 5.1 shall take precedence over the provisions of clause 5.3(a).

5.2 Until such assignment, the Supplier will co-operate with the Customer in any reasonable arrangements to provide the Customer with the benefit of such warranties or like conditions including enforcement at the cost of and for the benefit of the Customer.

5.3 To the extent that any OEM warranty is not passed to the Customer by the Supplier, the Supplier warrants the following:

(a) That in respect of Goods sold as 'new', on delivery, and for a period of 12 months or 1000 working hours (whichever is less) from the date of delivery (**New Goods Warranty Period**), shall:

- (i) conform in all material respects with their description;
- (ii) be free from material defects in design, material and workmanship; and
- (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

(b) That in respect of Goods sold as 'second-hand', unless otherwise agreed in writing by the parties, and to the fullest extent permitted by law, no warranties are given.

(c) That in respect of Goods sold as 'parts, on delivery, and for a period of 6 months from the date of delivery (**Parts Warranty Period**), shall:

- (i) conform in all material respects with their description;
- (ii) be free from material defects in design, material and workmanship; and
- (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.4 The Customer shall examine the Goods as soon as possible after their arrival at destination and shall notify the Seller in writing of any failure of the Goods to comply with the warranty set out at clause 5.3(a) within 48 hours of when the Customer discovers or ought to have discovered the failure.



5.5 Subject to clause 5.7, if:

- (a) the Customer gives notice in writing to the Supplier during a warranty period described in clause 5.3(a) or 5.3(c) (**Warranty Period**) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.3(a);
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to a location specified by the Supplier at the Customer's cost,

the Supplier shall, at its option:

- (a) replace the Goods with conforming goods, without any additional expense to the Customer on an Ex Works basis; or
- (b) repair the Goods without any additional expense to the Customer.

5.6 Unless otherwise agreed in writing, no action can be taken by the Customer, whether before judicial or arbitral tribunals, after the warranty period. It is expressly agreed that after the expiry of such term, the Customer will not plead failure of the Goods to comply with any warranty failure, or make a counter-claim thereon, in defence to any action taken by the Supplier against the Customer for non-performance of this Contract

5.7 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.3(a) if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.5;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the defect relates to exhaustible items including but not limited to items such as fuses and bulbs;
- (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (h) the defect arises otherwise than at the fault of the Supplier.

5.8 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.3(a).



5.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.10 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received in payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Supplier for sales of the Goods or any other goods or products to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) Hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(d); and
- (f) give the Supplier such information relating to the Goods as the Supplier may reasonably require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If, before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(d), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them

## **7. Supply of Services**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.





- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier and his employees shall comply with the Customer's safety, health and environmental policies and procedures, copies of which will be made available to the Supplier.
- 7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement or to comply with its own safety standards following a risk assessment, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. The Supplier may refuse to carry out the Services without any liability if in its reasonable opinion the performance of such Services could affect the safety of its site employees or third parties.
- 7.5 The Customer shall ensure the reasonable security of the Supplier's site employees and property whilst they on the Customer's site and in the Supplier's care during the term of this Contract.
- 7.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.7 For the avoidance of doubt, the Supplier shall not operate any machinery or equipment in the performance of the Services (or otherwise) and shall have no responsibility or liability for the operation of any such machinery or equipment. All responsibility in relation to the operation of any machinery or equipment shall remain with the Customer at all times.
- 7.8 To the extent that the Services include the provision of statutory inspections or training, the following provisions shall apply:
- (a) any certificates of inspection relating to the machinery provided in connection with the Services confirm the condition of the machinery on the date of inspection only and no representations or guarantees are provided as to the condition of that machinery on any other day; and
  - (b) any certificates relating to individuals provided in connection with the Services are issued on the basis of that individual's abilities, competency and performance on the day on which an assessment of that individual is carried out. No representation or guarantee is offered as to that individual's ability, competency or performance on any other day.
- 7.9 No liability shall attach to the Supplier for any issue which arises outside of the scope of clause 7.8.

## **8. Deposit**

- 8.1 The Supplier may require a Deposit to be paid in advance of the Supplier starting to provide the Goods and/or Services. Details of any such Deposit shall be set out in the Supplier's quotation.
- 8.2 Where a Deposit is payable, such Deposit shall be non-refundable in the event of:





- (a) Non-delivery of the Goods (as detailed in clause 4.6);
- (b) Non-completion of the Services due to a Customer Default; or
- (c) Cancellation or suspension of any deliveries by the Supplier due to the occurrence of event listed in clauses 17.1(b) to clause 17.1(d).

8.3 The retention of the deposit by the Supplier shall not prejudice the Supplier's rights under this Contract to recover any other costs and expenses incurred.

## 9. Customer's obligations

9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in both the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) if applicable, provide an operator for any affected machine for the duration of the performance of the Services;
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) provide the Supplier with access to any monitoring software and data derived from such software as may be required to enable the Supplier to perform the Services;
- (g) inform the Supplier of any access or safety issues prior to the commencement of the supply of Services;
- (h) prepare the Customer's premises for the supply of the Services;
- (i) where the site or any site hazard assessment indicates that items such as a mobile elevating platform, lifting equipment, portable access equipment or similar is required to facilitate the provision of the Services, provide such equipment immediately;
- (j) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (k) comply with all applicable laws, including health and safety laws;
- (l) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and



- (m) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 10. Charges and payment

10.1 The price for Goods shall be the price set out in the Order or, if no price has been agreed, the Supplier's current price list at the time the Contract is entered into shall apply. In the absence of such a current list price, the price generally charged for such Goods at the time of the conclusion of the Contract shall apply. Unless stated otherwise, the price for the Goods is exclusive of the costs and charges of packaging, transport, insurance and customs clearance of the Goods, which shall be invoiced to the Customer.

10.2 The Charges for the Services shall be calculated as follows:

- (a) the Charges shall be calculated based on an estimated job duration in accordance with the Supplier's daily fee rates, as set out in the Order;
- (b) the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day worked Monday to Friday between the hours of 7am and 6pm;
- (c) the Supplier shall be entitled to charge for any time incurred beyond the estimated time and job duration quoted where:
  - (i) such additional time and charges are incurred as a result of Customer Default or are otherwise not attributable to any act or omission of the Supplier; or
  - (ii) the Supplier is required to work outside of the usual hours, set out at clause 10.2(b) above; or
  - (iii) such additional time and charges have been agreed between the Supplier and the Customer in advance of having been incurred;



- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including but not limited to travel expenses, accommodation, toll fees and permit costs and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials; and
- (e) any additional service or repair work requested, which does not form part of the Services originally provided for in the Order, shall be treated as a separate service provision and charged for accordingly.

10.3 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

10.4 In respect of Goods, the following provisions shall apply:

- (a) unless otherwise agreed in writing, full payment of the price and all other sums due by the Customer to the Supplier are to be paid in advance and such advance payment must be received by the Supplier's bank in immediately available funds at least 30 days before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price (i.e. a Deposit is to be paid), the payment conditions of the remaining amount will be determined according to the rules set forth in this clause. The Customer will be responsible for any bank charges for transferring such sums;
- (b) if the parties have agreed on payment by documentary credit, then, unless otherwise agreed, the Customer must arrange for an irrevocable documentary credit in favour of the Supplier to be issued and confirmed by a reputable bank, subject to the latest version of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified prior to the delivery period commencing. Unless otherwise agreed, the documentary credit shall be payable at sight and allow partial shipments and transshipments. The Customer shall be responsible for all bank charges in relation to the letter of credit (including but not limited to charges for the establishment, confirmation and payment under such letter of credit);
- (c) if the parties have agreed on payment by documentary collection, then, unless otherwise agreed, documents will be tendered against payment (D/P) and the tender will in any case be subject to the latest version of the Uniform Rules for Collections published by the International Chamber of



Commerce. The Customer shall be responsible for all bank charges in relation to the documentary collection;

- (d) to the extent that the parties have agreed that payment is to be backed by a bank guarantee, the Customer is to provide, prior to commencement of the delivery period, a first demand bank guarantee subject to the latest version of the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby letter of credit subject either to such Rules or to the latest version of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in either case issued by a reputable bank. The Customer shall be responsible for all bank charges in relation to the bank guarantee.

10.5 In respect of Services, unless otherwise agreed in writing between the parties, the Supplier shall invoice the Customer in advance of the commencement of the provision of the Services (based on the estimated time and job duration). Any additional charges not included in the estimated time and job duration shall be invoiced by the Supplier on completion of such Services.

10.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

10.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.8 In respect of Goods, where the Customer is located outside the European Union and the delivery location is located inside of the European Union, the Customer shall comply with any reasonable written request of the Supplier in respect of satisfactory proofs of export from the European Union. A failure by the Customer to comply with a written request made under this clause 10.8 may result in the Customer being required to pay a VAT invoice in accordance with the provisions of clause 10.7.

10.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 17, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.9 will accrue each day at 4% a year above the Barclay's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.10 Notwithstanding clause 10.9, the Supplier may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1988.



10.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **11. Intellectual property rights**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

11.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **12. Data protection**

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. The Supplier processes any data collected in accordance with its privacy policy which can be found at <https://www.patersonsimons.com/privacy-policy/>. A hard copy of this policy can be provided on request.

## **13. Monitoring Software**

13.1 Goods sold pursuant to this Contract may be fitted with monitoring software which uses automotive technology to collect and hold data, including CanBUS and location data. The data collected can be accessed by both the Customer and the Supplier. Any such monitoring software is operated by, and subject to the terms and conditions of the manufacturer of the Goods. The Customer's purchase and use of the Goods shall constitute acceptance of such terms and conditions. The Customer should contact the manufacturer directly with any issues it may have relating to the monitoring software. The Supplier shall have no responsibility or liability to the Customer in relation to monitoring software described in this clause 13.1.

## **14. Confidentiality**

14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations



under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **15. Non-solicitation of employees**

15.1 In order to protect the legitimate business interest of the Supplier, the Customer covenants with the Supplier that it shall not, except with the prior written consent of the Supplier:

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away

from the employment or service of the Supplier, the services of any firm, company or person employed or engaged by the Supplier during the term of this Contract who could materially damage the interest of the Supplier if they were involved in any capacity in any business concern which competes with the business of the Supplier, other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.

15.2 The Customer shall be bound by the covenant set out in clause 15.1 during the term of the Contract and for a period of 12 months after termination or expiry of this Contract.

## **16. Limitation of liability**

16.1 The Supplier has obtained general liability insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

16.2 References to liability in this clause 16 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

16.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and



(d) defective products under the Consumer Protection Act 1987.

16.4 Subject to clause 16.3, the Supplier's total liability to the Customer shall not exceed the fees paid in respect of the Services and/or Goods purchased by the Customer under this Contract.

16.5 This clause 16.5 sets out specific heads of excluded loss and exceptions from them:

(a) Subject to clause 16.3, the types of loss listed in clause 16.5(b) are wholly excluded by the parties.

(b) The following types of loss are wholly excluded:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

16.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

16.7 In respect of Services only, unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

16.8 This clause 16 shall survive termination of the Contract.

## **17. Termination**

17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the





court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

17.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

17.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **18. Consequences of termination**

18.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

18.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.



## 19. Force majeure

- 19.1 For the purposes of this clause 19, a **Force Majeure Event** means any event beyond a the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, volcanic ash or default of suppliers or subcontractors
- 19.2 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 6 months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 20. General

### 20.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### 20.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission

- 20.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 20.3 the parties shall



negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**20.4 Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**20.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**20.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**20.7 Third party rights.**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**20.8 Variation.** No variation to the Contract shall be effective unless it is in writing and signed by the parties.

**20.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**20.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**Paterson Simons & Co (Africa) Limited**

**February 2024**