

Xtreme™

Performance

Agreement. Any other terms of trade of the Supplier are expressly excluded even if the Purchaser has been provided with or made aware of those terms.

2 Products and Services

- 2.1 The Supplier must provide the Products and Services in accordance with the Contract.
- 2.2 The Supplier must: (a) follow all reasonable instructions of the Purchaser (including as may be specified in any policies and procedures made available to the Supplier) in relation to the performance of its obligations under the Contract and, in the absence of any such instructions, act in a manner that it reasonably considers to be in the Purchaser's best interests; (b) promptly notify the Purchaser of any circumstances of which it becomes aware which are likely to impact its ability to perform its obligations under this Contract.

3 Delivery of Products

- 3.1 The Supplier must provide the Products to the Purchaser on or before the Delivery Date.
- 3.2 The Supplier must ensure that: (a) the Products are fit and suitable for the purpose(s) for which Products of that kind are commonly bought or for any purpose expressed in the Contract or reasonably to be inferred from it (including from the description of the Products in the Purchase Order); (b) the Products are of merchantable quality taking into account any purpose(s) for which Products of that kind are commonly bought and any purpose(s) expressed in the Contract or reasonably to be inferred from it (including the description of the Products in the

Purchase Order); (c) the Products correspond with any relevant samples provided by the Supplier; (d) the Products strictly conform with any Specifications;

(e) where the Supplier is the manufacturer of the Products, all reasonable care and skill has been used in manufacturing the Products; and (f) there is no restriction on or impediment to the passing of full title in the Products to the Purchaser.

- 3.3 The Products must be suitably prepared for shipment in a manner which ensures delivery of the Products undamaged. A delivery note must be clearly displayed on the Products showing the Purchase Order number and relevant item numbers of the Products.
- 3.4 The Products must be delivered to the Delivery Address on or before the Delivery Date. If the Products are incorrectly delivered, the Supplier will be held responsible for any additional expense incurred in delivering them to the correct destination.

4 Provision of Services

- 4.1 The Supplier must commence providing the Services on the Commencement Date and complete the Services by the Completion Date (if any).
- 4.2 The Supplier must: (a) provide the Services with all due care and skill, in a professional and timely manner, and to the best of its knowledge and competence; (b) provide and maintain at all times sufficient and appropriate management, Personnel, equipment and other resources necessary to provide the Services; and (c) ensure that the Personnel engaged in the performance of the Services: (i) are suitably qualified and experienced; and (ii) carry out their duties to the best of their skill and ability and in

accordance with industry best practice; (d) comply, ensure that the Services and work conducted by or on its behalf comply, and ensure so far as is reasonably practicable that its personnel comply, with applicable workplace health and safety laws, standards and policies; (e) promptly notify Purchaser of any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom Purchaser has a duty under applicable workplace health and safety laws.

4.3 If the Supplier is not providing the Services in accordance with, or otherwise complying with, the requirements of the Contract (including the Specifications), then, without limiting any other rights or remedies available to the Purchaser, the Purchaser may direct the Supplier to take such actions as the Purchaser deems reasonably necessary (in its sole discretion) to remedy the failure. The Supplier must promptly (and at least within the reasonable time period specified by Purchaser), and at its own cost, comply with any such direction.

4.4 If the failure is due to the act or omission of any Supplier Personnel of the Supplier, the Purchaser may require the Supplier to replace such Personnel with a person or persons acceptable to the Purchaser (acting reasonably).

5 Warranties

5.1 The Supplier warrants and represents that: (a) the execution and delivery of the Contract has been properly authorised; (b) it has full corporate power to execute, deliver and perform its obligations under the Contract; (c) it has the necessary expertise, skill, knowledge and resources to enable it to comply with its obligations under the Contract; (d) the Contract constitutes a legal, valid and binding obligation upon it and enforceable in accordance with its terms by

appropriate legal remedy; (e) there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware and which may have a material effect on the subject matter of the Contract; (f) it has and will continue to have during the term of the Contract, all licences, authorisations, consents, approvals and permits required by all applicable laws and regulations in order to perform the Services, provide the Products and to otherwise perform its obligations under the Contract; (g) it holds and will continue to hold the insurance policies as required under the Contract; (h) it complies and will continue to comply with all laws, regulations, standards and industry best practice applicable to the Services, the Products and the performance of its obligations under the Contract; (i) the Products and Services (including their provision) comply with: (A) all Local Laws, standards and industry best practice; and (B) the Specifications; (j) the Products and Services do not infringe the Intellectual Property Rights of any party.

5.2 The Supplier must deliver any Third Party Warranty to the Purchaser in a form acceptable to the Purchaser on or before the Delivery Date or Completion Date (as applicable).

5.3 All warranties referred to in the Contract will run to the Purchaser, its successors and assigns.

5.4 The requirements of this clause 5 are in addition to any other warranties, rights, remedies or guarantees from the Supplier or third parties in respect of the Products and Services set out in the Purchase Order or implied or imposed by Local Law.

6 Title and Risk of Loss

- 6.1 Title to the tangible Products (other than software) or part of the Products belongs to the Purchaser free of encumbrances and all other interests from the earlier of delivery or payment of the value (as reasonably determined by the Purchaser) of the Products or part of the Products.
- 6.2 The Supplier is solely liable for Loss or damage to: (a) the Products (until the Delivery Date); and/or (b) any material, plant and equipment for or to be used in the Supplier's performance of the Services or Contract; arising from any cause (except Loss caused by the negligence, omission or default of the Purchaser, its servants or agents).

7 Indemnities

- 7.1 The Supplier must indemnify and keep indemnified the Purchaser, its Affiliates, officers, directors, and employees (the "**Indemnified**") against all Losses awarded against or incurred or paid by the Indemnified

- 9.2 Unless notified in writing by Supplier promptly, but no later than 2 Business Days after having been provided a Change Request, the Change Request shall be at no additional cost to Purchaser otherwise the parties will negotiate in good faith any changes to the description of the Services, the Products and/or the Price necessitated by the Change Request. Any changes to the description of the Services, Products and/or the Price must be agreed in writing by the parties.
- 9.3 If the parties fail to reach agreement on any proposed changes to the Services, Products and/or the Price within 10 Business Days of the Change Request, the parties must refer the matter to be resolved as a Dispute in accordance with **clause 21 (Dispute Resolution)**.
- 9.4 The Supplier must implement the changes agreed in accordance with **clause 9.2** as soon as practicable, but in any event, within 20 Business Days (or such other period as may be agreed by the parties) of such agreement.
- 9.5 Unless otherwise agreed by the parties, the Supplier must continue to perform the Services and/or provide the Products, during any period in which the parties are negotiating changes in accordance with clause 9.2 or resolving a Dispute in relation to a Change Request in accordance with **clause 9.3**.

- or to be incurred by the other party, the amount of any input tax credit or any other credit for taxes and duties the other party is entitled to claim is deducted from that payment. Where payment amounts under the Contract are in respect of a taxable supply, in jurisdictions where there is a requirement to issue a tax invoice, the parties will agree to issue a tax invoice in respect of the supply
- 11.2 Should Purchaser or Supplier be obligated by Local Law to deduct and withhold any amounts (**Withholding Tax**) from any payment or payments otherwise due and payable to the other party to the Contract and remit such Withholding Tax to any Government Agency, such remitting party may do so and shall be deemed to have paid to the other party to the Contract, for all purposes associated with the Contract, each such payment made or remitted to such Government Agency. Each remitting party shall provide sufficient documentation to the other party to demonstrate proof of payment of such Withholding Tax
- 13.2 Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under the Contract and may only be shared with the Supplier's employees, agents, or contractors with a need to know such information.
- 13.3 Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret.
- 13.4 The Supplier may disclose Confidential Information: (a) when required to do so by Local Law or any Government Agency; and (b) to its Personnel where disclosure is necessary to perform the obligations under the Contract provided that each person has agreed to keep the information confidential on terms consistent with all the terms of the Contract.
- 13.5 The Supplier is responsible for any unauthor

12 Inspection

- 12.1 The Purchaser may inspect the Products and/or Services at any time and upon request, the Supplier must at its own cost facilitate inspection and give the Purchaser any access required for the purpose of conducting the inspection to the satisfaction of the Purchaser. Inspection does not relieve the Supplier of any of its obligations under the Contract.

13 Confidentiality

- 13.1 Confidential Information exchanged between the parties under the Contract will be treated as confidential and must not be used or disclosed by any person.

receiving a request from the Purchaser to do so.

- 13.8 The return, destruction or deletion of Confidential Information in accordance with **clause 13.7** does not release the Supplier from its obligations under the Contract.

14 Personal Information Protection

- 14.1 If, and to the extent that, any of the Confidential Information disclosed to the Supplier contains any Personal Information, the Supplier must: (a) comply at all times with Privacy Law, any privacy policy or code adopted by the Purchaser from time to time and any reasonable directions of the Purchaser notified to Supplier in connection with the disclosure or handling of any Personal Information; (b) only use Personal Information for the purpose of fulfilling its obligations under the Contract; (c) immediately notify the Purchaser if it becomes aware of any misuse, loss, unauthorised access or disclosure of the Personal Information, or of any complaint or investigation under, or relating to, any of the laws referred to in **14.1(a)**; (d) co-operate with the Purchaser in the resolution of any such complaint or investigation; and (e) take appropriate technical and organizational measures against the unauthorized or unlawful processing of Personal Information.
- 14.2 Where the Supplier is a legal person of a country of the European Union, it shall not transfer the personal information outside the European Economic Area or any third country deemed to ensure adequate protection by the European Commission pursuant to Directive 95/46/EC without the prior written consent of the Purchaser. In all other cases, the Supplier must not transfer or disclose any Personal Information outside the Country, or allow any person outside that Country to access, view

or receive any Personal Information, without the prior written approval of the Purchaser.

15 Acceptance

- 15.1 The Purchaser is entitled at any time before or after delivery, and without prejudice to any other rights, to reject any of the Products and/or any Services which (in its reasonable discretion) do not fully comply with the Contract. The Purchaser is not liable to pay for any Products and/or Services which are rejected fully or for any costs, loss or damages arising from a rejection. Products and/or Services rejected must be rectified or replaced by the Supplier (as elected by Purchaser) at Supplier's own cost. Products rejected after delivery must be promptly removed by the Supplier. In the event that Products and/or Services are rejected, the Purchaser may purchase alternative supplies from another service provider, as near as practicable to the Products or Services as circumstances permit, without prejudice to any other right which the Purchaser may have against the Supplier. Any amount paid by the Purchaser in respect of Products and/or Services which are rejected, is a debt due by the Supplier to the Purchaser.

16 Termination and Suspension

- 16.1 **Termination for convenience.** The Purchaser may terminate a Contract, in whole or in part, by notice in writing at any time for its convenience by giving no less than 30 days' written notice to the Supplier;
- 16.2 **Termination for cause.** Either party may terminate a Contract immediately by giving written notice to other party if: (a) the other party commits a breach of the Contract which

- is capable of remedy, and fails to remedy that breach within 10 Business Days from the date the first party notifies the other party of the breach; (b) the other party commits a material breach of any of its obligations under the Contract, which is not capable of remedy; or (c) an Insolvency Event occurs in relation to the other party; or (d) in the case of Purchaser, the Products and/or Services delivered to not conform to the Specifications.
- 16.3 **Suspension.** Without limiting the Purchaser's rights under clause 16.1 and 16.2, if the Supplier: (a) fails to complete the Products and/or Services by the Delivery Date or Completion Date; (b) indicates it is unwilling or unable to deliver the Products and/or complete Services; (c) neglects or fails to carry out promptly any direction of the Purchaser; or (d) is in breach of the Contract which is not rectified, the Purchaser may, at its discretion, suspend all payments under the Contract and may give the Supplier written notice that it is in breach of the Contract. If the Supplier fails to remedy the breach within 7 days of receiving the notice, the Purchaser may by a further notice in writing to the Supplier terminate the Contract or take the performance of the Contract wholly or partially out of the control of the Supplier and the Purchaser may then obtain the Products and/or Services by any method.
- 16.4 Upon termination or expiry of this Contract, the Supplier must: (a) deliver to the Purchaser all deliverables (including partially developed deliverables) delivered up to Purchaser subject to the payment of any outstanding fees directly relating to those deliverables; (b) at the Purchaser's option, immediately return or destroy any Confidential Information and any materials owned or provided by Purchaser to the Supplier under the Contract, which is in the possession or control of the Supplier; (c) refund to the Purchaser all amounts paid in advance in relation to any: (i) period during which Services will not be provided to the Purchaser; and (ii) Products that are not or will not be delivered to the Purchaser.
- 16.5 Termination or expiration of the Contract does not affect any right, claim or remedy of the Purchaser that accrued prior to termination or expiration.
- 16.6 If the Purchaser exercises its rights under clause 16: (a) any cost, loss, damage or expense incurred by the Purchaser as a result becomes a debt due and owing from the Supplier to the Purchaser; (b) the Supplier must immediately upon demand assign to the Purchaser any rights, titles, agreements and commitments relating to the supplies which the Supplier has acquired; (c) the Supplier must immediately make available for collection, or if required by the

- premises, facilities; (b) authorise the Purchaser to view and make copies of any materials including any licenses, permits, records and information required to be obtained and maintained under the Contract which are relevant to assessing compliance with the Contract (Audit).
- 20.2 The Supplier's obligations under clause 20.1 are subject to the Purchaser: (a) providing at least 5 Business Days' prior written notice to the Supplier; (b) conducting the Audit during ordinary business hours on a Business Days; and (c) not interfering unreasonably with the Supplier's ordinary business.
- 20.3 If the results of an Audit show that Supplier is not complying with the Contract, then Supplier must ensure that it and any relevant Supplier Personnel: (a) promptly remedy the non-compliance; and (b) comply with the Purchaser's reasonable directions to remedy the non-compliance, including directions as to timing.
- 20.4 Each party will bear its own costs associated with Audits, unless an Audit reveals that the Supplier has: (a) overcharged the Purchaser by 5% or more of the amount specified in the Purchaser Order in any month; or (b) breached the Contract in any way other than in a minor or inconsequential way; the Supplier must pay the Purchaser within 30 days of written demand, the Purchaser's costs of the Audit and such amount overcharged.

21 Dispute resolution

- 21.1 If a dispute arises in relation to any part of the Contract (**Dispute**), each party must not commence any court proceedings relating to the Dispute unless it has complied with the provisions of this **clause 21**, except to seek urgent interlocutory relief.

- 21.2 A party claiming that a Dispute has arisen must promptly notify the other party in writing giving details of the Dispute.
- 21.3 The parties must use reasonable endeavours to resolve any Dispute notified in accordance with **clause 21.2**.
- 21.4 If the parties fail to resolve the Dispute within 20 Business Days of a party receiving a notice in accordance with **clause 21.2**, each party must refer the Dispute to its respective Managing Director (or a similarly senior person) and ensure that its representative uses reasonable endeavours to resolve the Dispute.
- 21.5 If the parties are not able to resolve the Dispute in accordance with **clause 21.4** within 20 Business Days, either party may immediately refer the Dispute to the alternative dispute resolution centre nearest to the Purchaser's location ("**ADR Centre**") for mediation first and only then, if not successful, for arbitration in accordance with **clause 23.10** below, and the parties will use reasonable endeavours to resolve the Dispute following the rules specified by the ADR Centre.
- 21.6 Each party must bear its own costs in relation to complying with this **clause 21**, except for the costs and expenses of the mediation, which will be borne by the parties equally.

22 Notices

- 22.1 Any notice, approval or consent required to be given under this agreement must be in writing (in English) and must be delivered by hand, prepaid post, facsimile or electronic mail, to the address of the party set out in the Purchase Order or an alternate address as may be advised by the other party from time to time.

arrangements, representations or understandings (if any) of the parties in respect of matters dealt with by the Contract.

- 23.8 **Severance.** If any provision contained in a Contract is found to be illegal, invalid or unenforceable under any applicable Local Law, that provision will firstly, be read down to give it efficacy and, if that is not possible then, secondly the provision will, insofar as it is severable from the remaining terms, be deemed omitted (as the case may be) and will in no way affect the legality, validity or enforceability of the remaining terms.
- 23.9 **Intellectual Property Rights and Ownership.** Each party will retain all ownership rights to its previously existing intellectual property. Purchaser will own any work product created in connection with the Services rendered under the Contract, including software, documentation, training or educational materials, inventions, innovations and developments ("Work Product"), except that Purchase will gain no ownership rights in any of Supplier's previously existing intellectual property contained in the Work Product.
- 23.10 **Governing Law and Jurisdiction.** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitration shall be English. The governing law of the contract shall be the substantive law of England excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods.
- 23.11 **Governing Language.** The Contract is in the English language only, which shall be

controlling in all respects. In the event this all or any part of the Contract is translated into the language of the court having jurisdiction over the Contract, the English version of the Contract shall prevail over such translation with respect to any and all interpretations of Contract and with respect to any interpretation by such court of the intent of the parties.

24 Definitions and interpretations.

- 24.1 In the Contract:

"**Affiliate**" means any entity controlled by, controlling, or under common control with the Purchaser or Supplier. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this Contract;

"**Business Continuity Plan**" and "BCP" "means the plan setting out the Vendor's proposed methodology to ensure continuance

Purchaser or any other member of its Group, including any business, property or transaction in which the Purchaser or any other member of its Group may be or may have been concerned or interested; and (c) any other information disclosed by or on behalf of the Purchaser or any other member of its Group, including any such information made available to the Purchaser or any other member of its Group by any third party, but excluding any information: (i) which is publicly known; (ii) which is disclosed to the Supplier without restriction by a third party and without any breach of confidentiality by the third party; or (iii) which is developed independently by the Supplier without reliance on any of the Purchaser's Confidential Information.

"Contract" means these Purchase Order Terms, the Purchase Order (including any Special Conditions specified in the Purchase Order) and any other documents referred in these Purchase Order Terms or Purchase Order.

"Commencement Date" means the date specified in the Purchase Order.

"Completion Date" means the date specified in the Purchase Order.

"Country" means the country of corporate registration of the Purchaser.

"Delivery Address" has the address specified in the Purchase Order.

"Delivery Date" means the date specified in the Purchase Order.

"Dispute" has the meaning given in clause 21.

"Government Agency" means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

"Group" means, in relation to a body corporate, that body corporate and all its Affiliates.

"Insolvency Event" in relation to a party (insolvent party) means: (a) the insolvent party ceases or takes steps to cease to conduct its business in the normal manner; (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them; (c) the insolvent party is unable to pay its debts when they are due or is deemed under Local Law to be insolvent; (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or (e) an application or order is made or a resolution is passed for the winding up of the insolvent party.

"Intellectual Property Rights" means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"Local Law"

