

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

- Business Day:** means a day other than a Saturday, Sunday or bank or public holiday;
- Conditions:** means the Supplier's terms and conditions of supply set out in this document;
- Confidential Information:** means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
- Contract:** means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;
- Customer:** means the person who purchases the Services from the Supplier and whose details are set out in the Order;
- Force Majeure:** means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract, including circumstances where third party suppliers suffer an event or sequence of events which prevent the Supplier from performing its obligations under the Contract;
- Intellectual Property Rights:** means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:
- (a) whether registered or not;
 - (b) including any applications to protect or register such rights;
 - (c) including all renewals and extensions of such rights or applications;
 - (d) whether vested, contingent or future;
 - (e) to which the relevant party is or may be entitled, and

(f) in whichever part of the world existing;

Order: means the order for the Services from the Supplier placed by the Customer in substantially the same form as set out in the Schedule overleaf;

Services: means the Services set out in the Order and to be performed by the Supplier for the Customer;

Specification: means the description or specification of the Services set out or referred to in the Order; and

Supplier: means European Dissemination Media Agency Limited of Sempar, Lymedale Business Centre, Hooters Hall Road, Lymedale Business Park, Newcastle-Under-Lyme, ST5 9QF (company no. 10890087);

1.2 In these Conditions, unless the context requires otherwise:

(a) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form; and

(b) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract.

2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to these Conditions.

2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.

2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:

- (a) the Supplier's written acceptance of the Order; or
- (b) the Supplier performing the Services or notifying the Customer that they are ready to be performed (as the case may be).

2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.

3. PRICE

3.1 The price for the Services shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier before the date the Order is made (**Price**).

3.2 The Prices are exclusive of VAT (or equivalent sales tax).

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing.

3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Services which is due to any factor beyond the control of the Supplier.

4. PAYMENT

4.1 The Customer shall pay to the Supplier any deposit required for the Services in accordance with clause 4.3

4.2 The Supplier shall invoice the Customer for the Services upon acceptance of an Order unless otherwise stated in the payment schedules set out in the Order.

4.3 The Customer shall pay all invoices:

- (a) in full without deduction or set-off, in cleared funds within 14 of the date of each invoice or on the payment date specified in the Order as applicable; and
- (b) to the bank account nominated by the Supplier.

4.4 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the applicable due date:

- (a) the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of National Westminster Plc from time to time in force,
- (b) interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and/or
- (c) the Supplier may suspend provision of the Services under the Contract (including any other contract between the Supplier and the Customer) until any outstanding balance owed by the Customer is paid.

5. PERFORMANCE

- 5.1 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 5.2 The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.3 Time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 5.4 The Supplier shall not be liable for any delay in or failure of performance caused by:
 - (a) the Customer's failure to provide the Supplier with full, accurate and complete information required by the Supplier for performance or otherwise relating to the Services;
 - (b) Force Majeure.

6. OBLIGATIONS AND WARRANTY

- 6.1 The Customer shall provide such information relating to the provision of the Services as required by the Supplier as set out in the Order or otherwise requested from time to time.
- 6.2 The Customer warrants that it has provided and shall continue to provide the Supplier with all relevant, full and accurate information as to the Customer's business and needs for the provision of the Services.
- 6.3 The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with the Specification, provided that:
 - (a) the Customer serves a written notice on the Supplier not later than five Business Days from performance; and
 - (b) such notice specifies that some or all of the Services do not comply with the Specification and identifies in sufficient detail the nature and extent of the defects; and
 - (c) the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.

- 6.4 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 6.5 The Supplier gives no warranties and makes no representations in relation to the Services and in particular in relation to the services of third parties and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 6.6 The Supplier does not undertake with the Customer to any exclusivity arrangement and reserves the right to work with trades and businesses that may be similar to or the same as that of the Customer.

7. ANTI-BRIBERY

- 7.1 For the purposes of this clause 7 the expressions **adequate procedures** and **associated with** shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it including and any similar or equivalent legislation in any other relevant jurisdiction (**Bribery Laws**).
- 7.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- (a) all of that party's personnel;
 - (b) all others associated with that party; and
 - (c) all of that party's subcontractors;
- involved in performing the Contract so comply.
- 7.3 Without limitation to clause 7.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 7.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 7.

8. INDEMNITY

The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

9. LIMITATION OF LIABILITY

- 9.1 The Supplier's total liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall not exceed the price paid to it by the Customer in the 12 months preceding the date that any liability is incurred.
- 9.2 The Supplier shall not be liable for consequential, indirect or special losses or in particular for any of the following (whether direct or indirect):
- (a) loss of profit;
 - (b) loss of data;
 - (c) loss of use;
 - (d) loss of production;
 - (e) loss of contract;
 - (f) loss of opportunity;
 - (g) loss of savings, discount or rebate (whether actual or anticipated);
 - (h) harm to reputation or loss of goodwill.
- 9.3 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other losses which cannot be excluded or limited by applicable law.

10. INTELLECTUAL PROPERTY

- 10.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance or benefit of the Services infringes the Intellectual Property Rights of any third party (IPR Claim), provided that the Supplier shall have no such liability if the Customer:
- (a) does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - (b) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - (c) does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - (d) does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;

- (e) does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.

10.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:

- (a) procure for the Customer the right to continue receiving the benefit of the relevant Services; or
- (b) modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.

10.3 The Supplier's obligations under clause 10.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

11. CONFIDENTIALITY AND ANNOUNCEMENTS

11.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

- (a) any information which was in the public domain at the date of the Contract;
- (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- (c) any information which is independently developed by the Customer without using information supplied by the Supplier; or
- (d) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

11.2 This clause shall remain in force in perpetuity.

11.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

12. FORCE MAJEURE

12.1 The Supplier shall not be liable to the Customer if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

- (a) promptly notifies the Customer of the Force Majeure event and its expected duration; and
- (b) uses best endeavours to minimise the effects of that event.

12.2 If, due to Force Majeure, the Supplier:

- (a) is or shall be unable to perform a material obligation; or
- (b) is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days;

either party may, within 30 days, terminate the Contract on immediate notice notwithstanding that the Customer shall pay to the Supplier any proportion of the Price reasonably incurred prior to Force Majeure and including such proportion incurred in complying with clause 12.1(b).

13. TERMINATION

13.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

- (a) the Customer commits a material breach of Contract and such breach is not remediable;
- (b) the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
- (c) the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
- (d) any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

13.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (e) has a resolution passed for its winding up;
- (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;

- (h) has a freezing order made against it;
 - (i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - (j) is subject to any events or circumstances analogous to those in clauses 13.2 (a) to 13.2 (i) in any jurisdiction;
 - (k) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 13.2 (a) to 13.2 (j) including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 13.3 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 13, it shall immediately notify the Customer in writing.
- 13.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

14. NOTICES

- 14.1 Any notice given by a party under these Conditions shall:
- (a) be in writing and in English;
 - (b) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - (c) be sent to the relevant party at the address set out in the Contract
- 14.2 Notices may be given, and are deemed received:
- (a) by hand: on receipt of a signature at the time of delivery;
 - (b) by post: at 9.00 am on the second Business Day after posting;
 - (c) by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting;
 - (d) by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
 - (e) by email: on receipt of a delivery receipt email from the correct address.
- 14.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 14.1 and shall be effective on the date specified in the notice as being the date of such change.
- 14.4 All references to time are to the local time at the place of deemed receipt.

14.5 This clause does not apply to notices given in legal proceedings or arbitration.

15. CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

16. FURTHER ASSURANCE

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

17. ENTIRE AGREEMENT

17.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

17.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

17.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

18. VARIATION

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

19. ASSIGNMENT

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.

20. SET OFF

20.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

20.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

21. NO PARTNERSHIP OR AGENCY

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

22. SEVERANCE

22.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

22.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

23. WAIVER

23.1 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

23.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

24. CONFLICTS WITHIN CONTRACT

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

25. COSTS AND EXPENSES

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

26. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

27. LANGUAGE

27.1 The language of the Contract is English. All documents, notices, waivers, variations and other written communications relating to this agreement will be in English.

27.2 If this Contract and any document relating to it is translated, the English version will prevail.

28. GOVERNING LAW

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

29. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).