



## **STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES**

**OF**

**MILLER SOLUTIONS LIMITED**

### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document;
- 1.2 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Specification Document" means a statement of work, quotation or other similar document describing the goods and services to be provided by the Supplier;
- 1.5 "Supplier" means Miller Solutions Ltd, of Matilda House, Carrwood Road, Chesterfield, S41 9QB;
- 1.6 "Data Controller" means the party who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- 1.7 "Data Processor" means a person or entity who processes personal data on behalf of the Customer on the basis of a formal, written contract, but who is not an employee of the Customer.
- 1.8 "Data Subjects" means the individual whose personal data is processed within the scope of services provided to the Customer by the Supplier.

### **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document which shall specify the goods and services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

### **3 PRICE AND PAYMENT**

- 3.1 The price for the supply of goods and services are as set out in the Specification Document. The Supplier shall invoice the Customer within 14 days.

- 3.2 Invoiced amounts shall be due and payable within 30 days of receipt of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 10 % per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied.

#### **4 SPECIFICATION OF THE GOODS**

All goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract.

#### **5 DELIVERY**

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.
- 5.2 All risk in the goods shall pass to the Customer upon delivery.

#### **6 TITLE**

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

#### **7 CUSTOMER'S OBLIGATIONS**

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 7.1.1 co-operate with the Supplier;
  - 7.1.2 provide the Supplier with any information reasonably required by the Supplier;
  - 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 7.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.
- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall

be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;

7.4.2 if applicable, the timetable for the project will be modified accordingly;

7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

## **8 ALTERATIONS TO THE SPECIFICATION DOCUMENT**

8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.

8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

## **9 WARRANTY**

9.1 The Supplier warrants that as from the date of delivery for a period of 14 days the goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials.

9.2 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

9.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

## **10 INDEMNIFICATION**

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

## **11 LIMITATION OF LIABILITY**

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

## **12 TERMINATION**

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 12.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 12.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## **13 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

## **14 FORCE MAJEURE**



Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **15 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

## **16 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

## **17 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **18 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## **19 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## **20 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.



## **21 NO THIRD PARTIES**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

## **22 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

## **23 CUSTOMER COMPLAINTS PROCEDURE**

You may address any complaints in writing to: Miller Solutions Limited, Matilda House, Carrwood Road, Chesterfield, S41 9QB. Please include your mobile and Account number in any correspondence.

## **24 DATA PROTECTION ACT 2018**

### **24.1 OBLIGATIONS OF A DATA CONTROLLER (THE CUSTOMER)**

24.1.1 The Data Controller (the Customer) shall provide the Personal Data to the Data Processor (the Supplier) together with such other information as the Data Processor may reasonably require in order for the Data Processor to provide the Services.

24.1.2 The instructions given by the Data Controller to the Data Processor in respect of the Personal Data shall at all times be in accordance with Data Protection Act 2018. Therefore the Data Controller is accountable for their own compliance with the Data Protection Act 2018 and all of its obligations.

24.1.3 The Data Controller is accountable for ensuring that any data breach or loss incident is notified to the Data Processor if the Data Processor is required to support the Data Controller to investigate this incident.

24.1.4 The Data Controller is accountable for notifying the Data Processor if they are required to support the response to a Data Subject Access Request.

24.1.5 The Data Controller is accountable for the safe transportation of personal data to and from the Data Processor. The Data Processor advocates the encryption of all personal data during transportation and accepts no responsibility for data loss in the event that the Data Controller declines to encrypt the data.

### **24.2 OBLIGATIONS OF THE DATA PROCESSOR (THE SUPPLIER)**

24.2.1 The Data Processor will process the Personal Data in compliance with the Data Protection Act 2018.

24.2.2 The Data Processor undertakes that it shall process the Personal Data strictly in accordance with the Data Controller's instructions for the processing of that personal data.

24.2.3 The Data Processor will process the Personal Data for the following purposes only:

- Creation of account information for the Customer
- Creation of support documentation for the Customer
- Collation and storage of account information for contact purposes for administering support cases

- The creation / configuration of administrative personal data (usernames / password etc) that are required for support cases and administrative management of the Customers systems
- Communication with the Customer on an ad-hoc basis via a number of communication channels e.g. voice, email, web based or social media
- During the transfer of data from one data source to a target destination (e.g. the transfer of data between two work stations)
- When directly accessing the Customers systems for the purpose of development, migration, enhancement or support
- During remote support sessions
  - Attended sessions where the Customer physically initiates the support session
  - Unattended sessions where the Supplier initiates the support session (e.g. when access Customers servers etc)
- Creation and storage of data back ups (that may or may not contain personal data)
- During the authorised destruction of hardware

24.2.4 The Data Processor will treat the personal data, and any other information provided by the Data Controller as confidential, and will ensure that access to the Personal Data is limited to only those employees who require access to it for the purpose of the Data Processor carrying out the permitted processing and complying with its obligations under these Terms and Conditions.

24.2.5 The Data Processor will ensure that only such of its employees who may be required by it to assist it in meeting its obligations under these Terms and Conditions shall have access to the Personal Data. The Data Processor will ensure that all such employees have undergone training in the law of data protection, their duty of confidentiality under contract and in the care and handling of the Personal Data.

24.2.6 The Data Processor agrees to assist the Data Controller promptly with all subject access requests which may be received from Data Subjects to whom the Personal Data refers.

24.2.7 The Data Processor will not disclose the Personal Data to a third party in any circumstances other than at the specific written request of the Data Controller, unless the disclosure is required by law.

24.2.8 The Data Processor will NOT transfer the Personal data to a destination outside the European Economic Area (EEA) unless that destination has been nominated as having adequate safeguards in place or an established data protection certification in place (e.g. Privacy Shield for the US). Any exceptions to this will only be undertaken by the Data Processor when required to do so by law.

24.2.9 The Data Processor will not sub-contract any of the processing without the informed knowledge of the Data Controller. Where such information is provided, the Data Processor will ensure that any sub- contractor it uses to process the personal data complies with the Data Protection Act 2018.

24.2.10 The Data Processor will employ appropriate operational and technological processes and procedures to keep the Personal Data safe from unauthorized use or access, loss, destruction, theft or disclosure. The organizational, operational and technological processes and procedures adopted will comply with the principles of information security best practice as appropriate to the services being provided to the Data Controller. The Data Controller will use such best practice as a basis for auditing compliance with the guarantees which the Data Processor provides in relation to this obligation.

24.2.11 The Data Processor will notify the Data Controller of any information security incident that may impact the processing of the personal data covered by these Terms and Conditions within one working day of discovering, or becoming aware of any such incident. The Data Processor will co-operate with the Data Controller in implementing any required corrective action agreed between the parties.

24.2.12 The Data Controller reserves the right upon giving reasonable notice and within normal business hours to carry out compliance and information security audits of the Data Processor, in order to satisfy itself that the Data Processor is adhering to the Terms and Conditions for Services that they provide. Where a sub-contractor is used, the Data Processor agrees that the Data Controller may also, upon giving reasonable notice and within normal business hours, carry out compliance and information security audits and checks of the sub-contractor to ensure adherence to the Terms and Conditions as stated.

24.2.13 The Data Processor will retain the Data Controllers data under the legal basis of Contract Necessity (during the period of the contract) and under Legal Obligation thereafter aligned to their Retention Policy.

**Note** - The Data Processor reserves to right to delete all data that is no longer legitimately required for the exercising of a valid contract or legal obligation.

### 24.3 RIGHTS OF THE CUSTOMER (DATA SUBJECTS)

24.3.1 We adhere to the Customers rights (as a Data Controller) as data subjects as stated within Articles 12-23 under the GDPR (Data Protection Act 2018) including the data subjects rights to know:

- What personal data we hold about the data subject
- The purposes of the processing
- The categories of personal data concerned
- The recipients to whom the personal data has/will be disclosed
- How long we intend to store the data subjects personal data for
- If we did not collect the data directly from the data subject, information about the source

24.3.2 If the Customer believes that we hold any incomplete or inaccurate data about them (as a data subject), the Customer has the right to ask us to correct and/or complete the information and we will strive to do so as quickly as possible; unless there is a valid reason for not doing so, at which point the Customer will be notified.

24.3.3 The Customer also has the right to request erasure of the Customer personal data or to restrict processing (where applicable) in accordance with the data protection laws (note – unless this relates to the performing of a contract as per these Terms and Conditions); as well as to object to any direct marketing from us. Where applicable, the Customer has the right to data portability of the Customers personal information and the right to be informed about any automated decision-making we may use.

24.3.4 If we receive a request from the Customer to exercise any of the above rights, we may ask the Customer to verify their identity before acting on the request; this is to ensure that the Customers data is protected and kept secure.

24.3.5 We will retain the Customers data for as long as it is legitimately required as stated within our Retention Policy.



