

## **Gist Limited Conditions of Contract**

The following Conditions together with the relevant Order apply to and are deemed to be incorporated in the contract (the "**Contract**") for the supply to and the purchase by Gist Limited ("**Gist**") from the Supplier of the articles (the "**Goods**") and/or services (the "**Services**") described in the Order, including any and all documents, products and/or materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media (the "**Deliverables**"). In the event of any conflict between these Conditions and a term of the Order, the term of the Order shall apply. No terms and conditions put forward at any time by the Supplier shall form any part of the Contract or Order unless expressly and specifically agreed in writing by Gist.

### **1. Supply of Goods**

(a) The Supplier shall confirm its acceptance of an Order within three Working Days of the Order date.

(b) The Supplier shall supply the Goods in accordance with the Order. The Supplier warrants, represents, undertakes and guarantees that the Goods shall:

(i) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after delivery;

(ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

(iii) conform with the Order and all particulars specified therein;

(iv) be free from design defects;

(v) be fit for any purpose held out by the Supplier or made known to the Supplier by Gist expressly or by implication, and in this respect Gist relies on the Supplier's skill and judgement; and

(vi) comply with all applicable laws.

(c) The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations consents and permits that it needs to carry out its obligations under this Contract.

(d) The Supplier shall supply the Goods and any packaging in accordance with any environmental policy as provided to the Supplier from time to time.

### **2. Delivery**

(a) Gist shall have the right to change its delivery instructions at any time prior to despatch.

(b) On despatch of any consignment of Goods the Supplier shall send an advice note to the delivery address, specifying the means of carriage, the place and date of despatch and the number of packages.

(c) In consideration of Gist's payment of the price stated in the Order on or after delivery, the Supplier shall deliver the Goods, packed in accordance with Condition 2(d) and secured at the time and at the place and in the manner specified in the Order.

(d) The contents shall be marked on each package and any packages of hazardous Goods (and all documents relating there to) shall bear prominent and adequate warnings.

(e) The time stipulated on the Order for the delivery of the Goods or completion (the "**Delivery Date**") is of the essence and may not be altered without the express written consent of Gist.

(f) Delivery of the Goods shall be deemed to be completed once the Goods are unloaded, handed over to and signed for by Gist at the place and on the Delivery Date stated on the Order.

### **3. Rejection**

If the Order is not completed to Gist's reasonable satisfaction on or by the Delivery Date, or if the quality, design, material and/or workmanship of the Goods is not to Gist's reasonable satisfaction, or the Goods have been damaged or lost in transit, or the Goods are found not to conform to their specification or any sample within the longer of the two-month period following delivery or the two-week period following the Goods first being put into operation, then without prejudice to Gist's other rights or remedies, and notwithstanding that title to the Goods may have passed to Gist or payment may have been made Gist shall, as appropriate, be entitled to:

(i) terminate the Contract, whereupon the Supplier shall refund Gist's payment and pay any additional costs

that Gist may incur in buying the same or similar goods from another supplier, including but not limited to Gist's reasonable administration costs, chargeable staff time, and extra delivery costs;

(ii) reject the Goods and require the Supplier, free of charge, to repair or replace them, or provide a full refund of the rejected Goods;

(iii) require the Supplier, free of charge, to deliver substitute Goods within the timescales specified by Gist.

### **4. Storage**

If, for any reason, Gist is unable to accept delivery of the Goods at the time specified in the Order, the Supplier shall store the Goods and take all reasonable steps to maintain them in a merchantable condition. With the prior written consent of Gist, the Supplier shall insure the Goods at Gist's cost against damage, destruction or other loss.

### **5. Passing of Title**

(a) Without prejudice to any other rights or remedies of Gist, title and risk in the Goods shall pass to Gist when delivery of the Goods (including any part Order) is complete.

(b) The Supplier warrants that (i) it has full clear and unencumbered title to all the Goods, and (ii) at the Delivery Date of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver such Goods to Gist. On delivery Gist shall acquire a valid and unencumbered title to the Goods.

### **6. Cancellation**

Gist can cancel an Order for Goods, or any part of an Order, not yet delivered including any Order or part Order already in transit on the date of the notice of cancellation. Notice of cancellation shall be made in writing to the Supplier. Gist shall not be liable for any loss of anticipated profits or any consequential loss in respect of cancelled Orders.

### **7. Price**

(a) The price shall be a firm and fixed price unless adjustable to a formula previously approved by Gist in writing and specifically incorporated in the Order.

(b) Unless otherwise agreed the price of the Goods shall be inclusive of the cost of carriage and packing and of any duties, taxes, royalties, tariffs or other impositions changeable or

leviable on the Goods, and of any other sums whatsoever payable to any person in respect of the Goods.

(c) All sums payable under the Order are inclusive of VAT.

(d) The Supplier shall bear any additional costs it incurs directly as a result of any change made by Gist in Condition 2(a) or storage of the Goods pursuant to Condition 4 unless the parties, acting reasonably, agree otherwise.

## 8. Payment

The Supplier may only invoice Gist on or after delivery of the Goods or completion of the performance of the Services and invoices submitted early shall be deemed received on the date of either delivery of the Goods or completion of the performance of the Services. Invoices shall be in such form as Gist specifies from time to time and shall be addressed to Financial Management Centre at the address set out in the Order. Gist's Order number shall be quoted clearly on each invoice and on all invoice correspondence and advice notes. Unless otherwise specified, payment for the Goods of undisputed sums due shall be made by the end of the month following the date of the invoice. If any sum payable under this Agreement is not paid when due then the Supplier may make representation to Gist to pay interest on the overdue amount from the due date until payment is made in full at a rate which shall not exceed 3 (three) per cent per annum over Bank of England's base lending rate from time to time.

## 9. Guarantee:

Subject to any alternative guarantee arrangements agreed in writing between Gist and the Supplier, if within 12 months (or such other period as may be agreed) after delivery, Gist gives written notice to the Supplier of any defect in the Goods arising, under proper use, from faulty design (other than a design specified by Gist for which the Supplier has disclaimed responsibility in writing) materials or workmanship, the Supplier at his own cost shall immediately and without prejudice to any other right of Gist replace or repair the defective Goods.

## 10. Provision of Services

(a) If the Order is for or includes Services to be performed by the Supplier then, the Supplier

undertakes, represents and warrants to Gist that the Supplier shall:

(i) co-operate with Gist in all matters relating to the Services, and comply with all reasonable instructions of Gist;

(ii) perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;

(iii) use staff (including but not limited to directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Order) who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Order;

(iv) ensure that the Services conform with all descriptions and specifications set out in the Order and in any Specification, and that any Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Gist;

(v) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(vi) obtain and at all times maintain all necessary licences and consents, and comply with all applicable law;

(vii) observe all health and safety rules and regulations and any other security requirements that apply at any of the Gist's premises;

(viii) not do or omit to do anything which may cause Gist to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Gist may rely or act on the Services; and

(ix) comply with any reasonable instructions and guidelines issued by Gist from time to time.

(b) Time of performance of the Services is of the essence of the Order. The Services shall be provided so as to meet the dates set out in the Order.

## 11. Work on Site

If under the terms of the Order any Supplier staff are required to work on a Gist site for the purpose of supplying the Services, the Supplier shall:

(i) unless otherwise stated in the Order, be deemed to have arranged for, and the price shall be deemed to include, the cost of all insurance necessary for the provision of the Services. In particular, insurance must be affected for; full third party public liability insurance for not less than £5 million (for any one accident); and employer's liability insurance of not less than £5 million, and evidence of these insurances shall be produced on request;

(ii) be responsible for the Goods and materials used in connection with provision of the Services until completion of the Order and acceptance of the Deliverables by Gist;

(iii) at all times abide by Gist's Rules and Regulations, details of which will be made available to the Supplier by the manager of the site concerned;

(iv) procure that Supplier staff pay particular attention to the "No Smoking" requirements and all safety signs and notices provided to the Supplier and/or displayed at the site from time to time;

(v) observe the provisions of any statute, regulation or statutory instrument applicable to working on the site; and

(v) when required by Gist's site engineer or other nominated representative, carry away excavated and other unwanted material arising from the execution of any works by the Supplier in connection with the Services and as work progresses shall from time to time remove all surplus materials, debris, rubbish, unused materials, temporary erections etc. from the site at its own cost, and shall on completion leave the site clear and tidy to Gist's reasonable satisfaction.

## 12. Materials Provided by Gist

(a) The Supplier shall hold all materials, plans, drawings, equipment, tools, specifications, patterns and data relating to the Goods and/or Services which are delivered by Gist to the Supplier (the "**Materials**") in safe custody at its own risk, maintain the Materials in good condition until returned to Gist and not dispose or use such Materials other than in accordance with Gist's written instructions or authorisation.

(b) All such Materials shall remain the property of Gist and upon completion of the relevant Order shall be returned to Gist in good condition.

(c) No Materials shall be shown nor their contents disclosed to any other persons, nor shall they be copied or used for any purpose other than for the completion of the Order.

(d) The Supplier shall be fully responsible for any loss or damage to any free issue materials or to any Materials or other property whilst in the Supplier's possession for any purpose connected with the Contract.

### **13. Special Tool Jigs or Fixtures**

Any tool, jig or fixture that is required for the execution of, and made specifically for the Order becomes the property of Gist on completion of the Order unless specifically agreed otherwise by Gist in writing.

### **14. Intellectual Property Rights**

Subject to Condition 15, the Supplier warrants that any Goods supplied pursuant to an Order do not infringe any patent or registered design or trade mark or other protected intellectual property right and undertakes to indemnify Gist against all royalties or licence fees (to the extent not specifically provided for). In the event that a claim arises under this warranty, Gist shall have the right to terminate the Order immediately on written notice and without further liability.

### **15. Development Work**

(a) All intellectual property rights in all Goods and/or Deliverables which are written or produced on a bespoke or customised basis, including without limitation all future rights in connection with the said Goods and/or Deliverables, shall be owned by Gist and the Supplier shall take all steps necessary to effect such ownership, including without limitation the execution of documents.

(b) The Supplier shall not sell to any third party intellectual property developed solely for the benefit of Gist unless a separate marketing agreement is formally concluded with Gist.

(c) Where the Supplier provides Deliverables subject to existing intellectual property rights, it shall disclose this to Gist, and warrants it has the right to do so.

(d) Except as provided above both parties retain ownership of their pre-existing intellectual property rights.

### **16. Indemnity**

(a) The Supplier shall indemnify Gist against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred by Gist arising out of or in connection with:

(i) any claim made against Gist for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services and/or Deliverables (but for the avoidance of doubt excluding the Materials);

(ii) any liability under the Consumer Protection Act 1987 arising out of, or in connection with the Goods, as delivered, and/or the Deliverables;

(iii) breach of any warranty given by the Supplier;

(iv) any claim made against Gist by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;

(v) breach of Condition 2(d).

(b) Nothing in this Contract shall be construed to limit or exclude either Party's liability for:

(i) death or personal injury caused by its negligence or that of its staff;

(ii) fraud or fraudulent misrepresentation by it or that of its staff;

(iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(iv) any other matter which, by law, may not be excluded or limited.

### **17. Insurance**

The Supplier shall at its own cost effect and keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract. The Supplier shall on the written request of Gist from time to time provide Gist with reasonable details of the insurance maintained in force. The Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Condition 17.

### **18. Termination**

(a) Without prejudice to any other right or remedy it might have, Gist may terminate the Contract in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered) by written notice to the Supplier with immediate effect if:

(i) the Supplier is in material breach of any obligation under the Contract which is not capable of remedy;

(ii) the Supplier repeatedly breaches any of the terms and conditions of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;

(iii) the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

(iv) the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this Condition 18(a)(iv) in consequence of debt in any jurisdiction;

(v) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(vi) there is a change of control (within the meaning of s1124 of the Corporation Tax Act 2010) of the Supplier.

### **19. Consequences of Termination:**

(a) The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

(b) Subject to Condition 19(a), the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Condition 19.

(c) Any provision of the Contract that expressly or by implication is

intended to come into or continue in force on or after termination or completion of the Contract shall remain in full force and effect. Including but not limited to the provisions of Condition 9 (Guarantee), Condition 14 (Intellectual Property Rights), Condition 15 (Development Work), Condition 16 (Indemnity), Condition 19 (Consequences of Termination), Condition 21 (Confidentiality) and Condition 37 (Governing Law and Jurisdiction).

(d) Subject to Condition 19(e), the Supplier shall immediately return to Gist (or if Gist so requests by notice in writing, destroy) all of Gist's property in its possession at the date of termination including all Materials and Confidential Information (including all copies of such Confidential Information), and shall make no further use of such Confidential Information. If the Supplier fails to return the Materials Gist may enter the Supplier's premises and take possession of them.

(e) If the Supplier is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy pursuant to Condition 19(d), it shall notify Gist in writing of such retention, giving details of the documents or materials that it must retain.

## **20. Force Majeure**

(a) If Gist is prevented for any reason beyond its reasonable control from accepting Goods and/or allowing the performance of Services, it shall be entitled to delay receipt of Goods or Services whilst such circumstances continue or, at its option, to terminate the Contract. In the case of delay in the provision of Services, if the delay persists for more than three months, the Supplier shall be entitled to terminate the Contract.

(b) If the Supplier is prevented for any reason beyond its reasonable control from delivering Goods and/or supplying the Services, Gist shall be entitled to terminate the Contract immediately.

(c) Termination of the Contract under this Condition 20 shall be without liability to either party, other than rights or liabilities already accrued.

## **21. Confidentiality**

(a) For the purposes of the Contract "**Confidential Information**" means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which (i) is known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential.

(b) The Supplier shall keep and procure to be kept secret and confidential all Confidential Information belonging to Gist disclosed or obtained as a result of the relationship of the parties in connection with the Contract and shall not use nor disclose such Confidential Information except when either needed in order to perform the Order or Contract properly or Gist has given its prior written consent.

## **22. Variations**

Neither Gist nor the Supplier shall be bound by any variations to the Order or Contract except as agreed in writing by both parties, refers specifically to the Order or Condition of Contract, and is signed by a duly authorised representative of each of the parties.

## **23. Assignment and Sub-contracting**

Gist is contracting with the Supplier on the basis that the Goods and/or Services will be supplied by the Supplier. Accordingly no assignment, sub-contracting, transfer or delegation of the Supplier's obligations under the Contract may be made without the specific prior written consent of Gist.

**24. Right of Lien:** The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods, any Deliverables or other materials relating to the Services or any Materials in the Supplier's possession, in respect of any sums owed by Gist to the Supplier under the Order or otherwise.

## **25. Notices:**

(a) For the purposes of Condition 1 and this Condition 25 "**Working Day**" means any day other than a Saturday, Sunday or bank holiday, or public holiday in any part of the United Kingdom.

(b) Any notices sent in connection with the Order or Contract must be in

writing. For the avoidance of doubt, notice sent by email is deemed to be in writing. Notices under Condition 18 (Termination) or Condition 20 (Force Majeure) may be served by email only if the original notice is then sent by personal delivery or recorded delivery.

(c) Notices may be served by personal delivery, recorded delivery or email to the address of the relevant party set out in the Order, or such other address as that party may from time to time notify the other.

(d) A notice shall be deemed served on the Working Day of delivery provided such delivery is before 17.00 on a Working Day. Otherwise service of notice shall be deemed to occur on the next Working Day. A notice sent by email shall be deemed served when sent unless an error message is received.

## **26. Data Protection**

To the extent that either party is a processor of personal data in relation to which the other party is the controller, each party shall comply, and shall procure that its staff comply, with its relevant obligations under the General Data Protection Regulation (Regulation (EU 2016/679), the Data Protection Act 2018 and all applicable data protection laws in connection with its obligations under the Contract.

## **27. Modern Slavery**

The Supplier warrants that it will comply with the Modern Slavery Act 2015 and shall notify Gist immediately if it becomes aware of any breach or potential breach of its obligations under this Condition 27.

## **28. Prevention of Fraud and Corruption**

(a) The Supplier warrants that it shall comply with the Bribery Act 2010 and shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or Order or any other contract or order, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or Order, or any other contract or order.

(b) The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by staff and the Supplier

(including its shareholders, members and directors) in connection with this Contract or Order, or any other contract or order, and shall notify Gist immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

### **29. Statutory Requirements**

(a) The Supplier shall promptly notify Gist of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. Gist shall promptly notify the Supplier of any health and safety hazards which may exist or arise at Gist's premises and which may affect the Supplier in the performance of its obligations under the Contract.

(b) The Supplier shall:

(i) comply with the reasonable requirements of Gist's security arrangements;

(ii) comply with all Gist's health and safety measures;

(iii) notify Gist immediately in the event of any incident occurring in the performance of its obligations under the Contract on Gist's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

(iv) perform its obligations under the Contract in accordance with all applicable equality law and Gist's equality and diversity policy as provided to the Supplier from time to time; and

(v) take all reasonable steps to secure the observance of Condition 29(b)(iv) by all staff.

(c) In performing its obligations under the Contract the Supplier shall comply with all applicable laws, statutes, regulations from time to time in force; and all policies notified to it from time to time by Gist.

### **30. Linde Code of Ethics**

As part of the Linde Group, Gist operates within the Linde Code of Ethics. The Code can be downloaded from [www.linde.com](http://www.linde.com). Gist has the right to terminate its business relationship and any associated agreements with the Supplier if the Supplier is in breach of the Code.

### **31. Disputes**

(a) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and

such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

(b) If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Condition 31(a), the dispute may by contract between the parties be referred to a neutral adviser or mediator (the "**Mediator**") agreed by the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

(c) If the parties fail to appoint a Mediator within one month, or fail to resolve the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

### **32. Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **33. Severance**

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 34 shall not affect the validity and enforceability of the rest of this Contract.

### **34. 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.

### **35. Third Parties' Rights**

The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

### **36. Entire Agreement**

The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

### **37. Governing Law and Jurisdiction**

These Conditions and the Order shall be governed by and construed in accordance with English Law. All disputes or claims arising out of or relating to the Order shall be subject to the exclusive jurisdiction of the English and Welsh courts.