

## Inchcape UK Terms and Conditions

### PART A - GENERAL

#### 1. INTERPRETATION

1.1. Except as otherwise stated in these Terms or required by their context:

- 1.1.1. references to any gender include them all and to the singular include the plural;
- 1.1.2. references to a "company" shall include any legal or natural person and include unincorporated groups of persons;
- 1.1.3. references to statutory provisions are to those provisions as in force from time to time; and
- 1.1.4. headings to Clauses are for ease of reference only.
- 1.1.5. In these Terms:

**Agreement** means the Appointment Letter, Purchase Order Terms & Conditions (available at <https://www.inchcape.co.uk/terms-and-conditions/>), its appendices and these Terms;

**Appointment Letter** means the letter of appointment of the Supplier as an authorised supplier to the Customer for Goods and/or Services;

**Commencement Date** has the meaning given to it in the Appointment Letter;

**Confidential Information** means any and all tangible and intangible information disclosed hereunder, including but not limited to: software, data, specifications, standards and know-how of any nature such as technical, scientific, engineering, commercial, financial, marketing or organizational, which (i) is marked as "confidential," "proprietary" or with some similar indication; (ii) is expressly advised by the disclosing party to be confidential through some contemporaneous oral or written means; or (iii) which the receiving party would reasonably construe to be of a confidential nature considering the circumstances of its disclosure and/or the nature of the information. The definition of Confidential Information shall, however, not include information which (i) at the time of disclosure is part of the public domain, or which thereafter comes into the public domain through no fault of the receiving party, (ii) at the time of disclosure was already in the legitimate possession of the receiving party without any confidentiality restrictions, as evidenced by written records (iii) was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information communicated to the receiving party; and (iv) which is properly received by the receiving party from a third party which has the right to disclose such information;

**Control** means the ability of a person to direct or cause the direction of the management and policy of another person whether through ownership of the voting rights in securities or capital stocks or assets, by contract or otherwise and **Controlled** shall be read accordingly;

**Customer** has the meaning given to it in the Appointment Letter;

**Data Protection Laws** all applicable privacy and data protection laws including the Data Protection Act 2018 as may be amended, replaced or updated from time to time and the General Data Protection Regulation ((UK) 2016/679) ("UK GDPR") and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

**Expiry Date** has the meaning given to it in the Appointment Letter;

**Inchcape Group** means Inchcape Group PLC (Company Number 609782) and all companies within its Control;

**Intellectual Property Rights** means patents, trademarks, service

marks, trade or business names, domain names, registered designs, layout design rights, registered designs, semiconductor topography rights, database rights, copyrights, rights in computer software, rights protecting trade secrets and confidential information, rights protecting goodwill and reputation and other similar or corresponding proprietary rights and all applications for the same, whether presently existing or created in the future, anywhere in the world, whether registered or unregistered, and all rights to sue, recover damages and obtain relief or other remedies for any past, current or future infringement, misappropriation or violation of any of the foregoing rights;

**Net Prices** means the prices to be charged for Goods or Services set out in the Appointment Letter;

**Goods** means the Goods as set out in the Appointment Letter;

**Regulatory Requirements** means in relation to any jurisdiction, any applicable requirements and restrictions imposed by statute, regulation, by-law, ordinance or subordinate legislation from time to time, or by common law, or by any binding court order, judgment or decree, or by any governmental, regulator, professional or trade body (including, without limitation, any regulations, codes or practice and guidance) and all other applicable statutory and other rules, regulations and provisions in force from time to time;

**Services** means the Services as set out in the Appointment Letter;

**Supplier** has the meaning given to it in the Appointment Letter; and

**Terms** means these Terms and Conditions.

- 1.2. The Supplier agrees that the Agreement contains the only terms upon which the Customer is prepared to contract for the purchase of Goods and/or Services. The Agreement shall govern to the entire exclusion of all other terms or conditions. The Supplier irrevocably waives its rights under the provisions of any of its standard terms and conditions whether contained or referred to in any quotation, acknowledgement or acceptance of order, specification, delivery note or other similar document.
- 1.3. Any delivery of Goods or commencement of performance of Services shall be deemed to constitute acceptance of the Terms.
- 1.4. The Supplier warrants and represents that:
  - 1.4.1. it has the power to enter into the Agreement and has obtained all necessary approvals to do so; and
  - 1.4.2. the Agreement will be valid and enforceable on it.
- 1.5. These Terms are incorporated in and form part of the Agreement. If there is any conflict between the terms of the Appointment Letter and these Terms, the terms of the Appointment Letter shall prevail.
- 1.6. The Customer's appointment of the Supplier is non-exclusive and nothing in these Terms or the Agreement shall oblige the Customer to order any Goods and/or Services.
- 1.7. The Customer's appointment of the Supplier shall be subject to the Agreement (and any terms implied by statute or common law that cannot be excluded).
- 1.8. The Supplier agrees to procure that all companies within its Control or under common Control with it accept, and comply with, the terms of the Agreement in their dealings with the Customer, and the Supplier agrees to do and execute all such further acts and things as the

Customer may reasonably require to give full effect to this obligation, including, without limitation, notifying all such companies of the execution of the Appointment Letter, and providing them with a copy of the Agreement. The Supplier shall indemnify the Customer from and against any and all losses, damages, liabilities, costs and expenses (including reasonable legal expenses) suffered or incurred by the Customer arising out of or in connection with any breach by the Supplier of the obligation set out in this Clause.

## **PART B - GOODS**

### **2. SPECIFICATION OF GOODS**

**2.1.** The Goods and the Services shall conform in all respects with the Agreement, and with any representations previously made by or on behalf of the Supplier.

**2.2.** It is a condition of the Agreement that:

- 2.2.1. Goods shall be free from defects in design, material and workmanship and free of any charge or encumbrance;
- 2.2.2. Goods shall be new at the time of delivery and in all respects be in accordance with all samples, patterns, descriptions and specifications agreed between the Supplier and the Customer;
- 2.2.3. Goods shall be capable of the standard performance specified in the Agreement;
- 2.2.4. Goods shall be of satisfactory quality and fit for their purpose;
- 2.2.5. Goods shall comply in design, construction and quality with all relevant industry codes of practice (including, but not limited to, national and EU standard specifications) and all other regulations or legislation affecting the Goods in any territory notified to the Supplier by the Customer or in which the Goods are to be delivered or used;
- 2.2.6. Goods shall be free from foreign bodies, contamination and objectionable odours;
- 2.2.7. the Goods will not infringe any Intellectual Property Rights of a third party or rights of any third party in confidential information.

**2.3.** The Supplier warrants and represents that any documents relating to the Goods delivered to the Customer are valid and that the information contained in such documents is true, accurate and not misleading.

**2.4.** The Supplier shall use its best endeavours to assign to the Customer the benefit of any third party manufacturer's warranties, guarantees or similar rights that may apply to the Goods.

### **3. INSPECTION**

**3.1.** The Supplier warrants and represents that it has exercised all due diligence and taken all reasonable precautions in the manufacture and supply of the Goods.

**3.2.** The Supplier agrees to allow the Customer or its authorised agents, to visit its premises and to procure that the Customer may visit any other location in any way connected to the Goods, to ensure that it is discharging its responsibilities effectively and to the Customer's satisfaction. The Supplier shall afford the Customer or its agents every facility for such purposes at its premises and other such locations, including the provision of test records and other documentation (at its cost) and the facility to observe and/or test any process or provision being carried out. If as a result of such inspection or testing the Customer is of the opinion that the Goods do not conform or are unlikely to conform with the terms of the Agreement, the Customer may inform the Supplier and the Supplier shall immediately

take such action as is necessary to ensure conformity. In addition, the Customer shall have the right to require and witness further testing and inspection. Any such inspection or test, or failure to inspect or test, shall not in any way relieve the Supplier from any of its obligations hereunder.

**3.3.** Before despatching or delivering the Goods, the Supplier shall carefully inspect and, where appropriate, test them, at its own cost, for compliance with the provisions of the Agreement.

### **4. LABELLING AND WARNINGS**

**4.1.** The Supplier warrants and represents that the labelling and packaging of the Goods complies with all Regulatory Requirements where the Goods are supplied to the Customer.

**4.2.** The Supplier shall supply with the Goods all written instructions, information and warnings relating to the Goods necessary for their safe use or for the Customer to comply with any obligation it may have under statute or otherwise.

### **5. DELIVERY**

**5.1.** The Supplier shall deliver the Goods DDP (as defined in Incoterms 2000) to the Customer's place of business or to such other place of delivery (or on such other delivery terms) as is agreed by the Customer in writing prior to delivery of the Goods.

**5.2.** The Supplier shall deliver the Goods by the date and time specified by or on behalf of the Customer.

**5.3.** The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

**5.4.** Time shall be of the essence in delivery of the Goods.

**5.5.** Unless otherwise stipulated by the Customer, deliveries shall only be accepted by the Customer in normal business hours.

**5.6.** If any Goods are not delivered on or accepted by the due date (save in respect of any failure to deliver caused entirely due to the Customer making alterations in design, specification or quantities required), or fail to comply with the provisions of the Agreement by reason of (without limitation) their quality, quantity or otherwise, or are delivered in error then the Customer may, at its sole discretion reject such Goods, cancel the Agreement in whole or in part, and:

- 5.6.1. return at the Supplier's risk and expense the Goods or any instalment and immediately upon such return the Supplier shall refund to the Customer any monies paid in respect of such Goods; or
- 5.6.2. direct the Supplier to, whereupon the Supplier shall immediately, replace, repair or rectify such Goods, so that they comply with the terms of the Agreement; or
- 5.6.3. purchase equivalent Goods from another supplier and recover from the Supplier any additional costs incurred by the Customer in obtaining such equivalent Goods from that other supplier.

**5.7.** The provisions of this Clause shall apply to Goods repaired and replaced as they do to Goods as originally supplied.

**5.8.** The rights of the Customer under Clauses 5 and 6 are without prejudice to any other rights it may have under or in connection with the Agreement or at law; in particular, but without limiting the foregoing, the Customer may claim all its costs and expenses incurred in relation to the exercise of its rights under Clauses 5 and 6.

**5.9.** The making of any prior payment shall not prejudice the Customer's right of rejection.

**5.10.** Any carrier appointed by the Supplier in relation to delivery of the Goods shall be deemed to be the Supplier's agent and not that of the Customer.

**5.11.** The Supplier shall:

- 5.11.1. comply with any standing instructions or policies of the Customer in respect of the making of deliveries; and
- 5.11.2. deliver or procure delivery of the Goods using well-maintained, suitable and roadworthy vehicles complying with all Regulatory Requirements.

**5.12.** In the event of delivery of the Goods in excess of quantities ordered by the Customer:

- 5.12.1. the Customer shall notify the Supplier as soon as reasonably practicable;
- 5.12.2. the Supplier may collect such excess Goods within 24 hours of such notification;
- 5.12.3. in the event that the Supplier does not collect such excess Goods, title in such Goods shall pass to the Customer without charge; and
- 5.12.4. section 30(3) of the Sale of Goods Act 1979 shall be read subject to this Clause.

## **6. REJECTION**

**6.1.** Where the Customer rejects any Goods not complying with the provisions of the Agreement ("Rejected Goods") and does not exercise its right under Clause 5.6.1, it shall notify the Supplier forthwith of such rejection and the proposed method of disposal of the Rejected Goods (such notice a "Rejection Notice"). The Supplier may in response to a Rejection Notice inspect the Rejected Goods at a reasonable time within the Customer's normal business hours and without disrupting the Customer's business.

**6.2.** The Supplier in response to a Rejection Notice may request return of the Rejected Goods and if so requested, shall collect the Rejected Goods at its cost and at a reasonable time within the Customer's normal business hours and without disrupting the Customer's business.

**6.3.** Where (a) there is any breach of quality control processes in relation to Goods; or (b) any Goods do not comply with Clause 2.2.4 (each such occurrence of such circumstances an "Incident") the Customer may conduct a full investigation and the Supplier shall permit the Customer access to its premises and staff for the purposes of such investigation and shall offer such co-operation as the Customer may reasonably require.

**6.4.** In the event of an investigation by the Customer under Clause 6.3 the Supplier shall pay to the Customer on demand the Customer's reasonable costs incurred in respect of the administrative resources and costs (including relevant laboratory testing) required to investigate each Incident. The Supplier agrees and acknowledges that such charges are without prejudice to any other rights or remedies of the Customer under the Agreement.

## **7. RISK AND TITLE**

**7.1.** Subject to Clause 7.2, risk of loss or damage in the Goods and title to the Goods shall transfer from the Supplier to the Customer on delivery of the Goods, notwithstanding any attempt by the Supplier to transfer risk at an earlier date or any purported retention of title by the Supplier until some later date.

**7.2.** Where Goods are subject to acceptance testing or other processes establishing when Goods are or are deemed to be accepted set out in the Agreement, risk in and title to such Goods shall pass to the Customer on acceptance unless the Agreement otherwise provides.

## **8. PRODUCT RECALL**

**8.1.** Where either party reasonably believes that any Good is defective or unsafe, that party shall promptly inform the other of the relevant circumstances.

**8.2.** If further to a notification under Clause 8.1 either party determines that a recall of affected Goods (a "Product Recall") is necessary, then the parties will co-operate to take such steps as necessary to implement a Product Recall. Where the Customer initiates a Product Recall the Supplier shall provide the Customer with details of all associated costs with such Product Recall.

**8.3.** The Supplier shall comply with such product recall policies as Inchcape Group may establish in force from time to time.

**8.4.** Where a Product Recall is effected the Supplier:

- 8.4.1. shall advise the Customer of the quantity of affected Goods in relation to the Customer and of alternative Goods;
- 8.4.2. shall advise the appropriate competent authorities in the relevant country of such Product Recall;
- 8.4.3. shall provide the Customer as soon as reasonably practicable with all documentation relating to the sourcing and circulation of affected Goods; and
- 8.4.4. shall comply with its obligations in relation to such affected Goods under applicable law.

**8.5.** The parties shall keep up to date a database with 24 hour contact details of relevant personnel who may be contacted in the event of an actual or potential Product Recall.

## **PART C - PERFORMANCE OF SERVICES**

### **9. PERFORMANCE OF SERVICES**

**9.1.** Time shall be of the essence in performance of the Services.

**9.2.** It is a condition of the Agreement that:

- 9.2.1. Services will be carried out by appropriately qualified and trained personnel using all reasonable skill and care and to such high standard of quality as is reasonable for the Customer to expect in all the circumstances;
- 9.2.2. Services will be performed using first class materials suitable in all respects for their purposes;
- 9.2.3. the Services will be performed in accordance with their specifications, the service levels and other performance metrics, and the timescales and dates set out in the Agreement;
- 9.2.4. the performance and outcome of the Services will not infringe any Intellectual Property Rights of a third party;

- 9.2.5. the Services will be performed at all times in accordance with all Regulatory Requirements.
- 9.3. If any Services are not performed or accepted by their due date, or fail to comply with the provisions of the Agreement by reason of (without limitation) their quality, quantity or otherwise, then the Customer may, at its sole discretion, cancel the Agreement in whole or in part, and:
- a) direct the Supplier to, whereupon the Supplier shall immediately, re-perform or rectify performance of such Services, so that they comply with the terms of the Agreement; or
  - b) purchase equivalent Services from another supplier and recover from the Supplier any additional costs incurred by the Customer in obtaining such equivalent Services from that other supplier.
- 9.4. This Clause 9 shall apply to Services re-performed or rectified as it does to Services as originally performed.
- 9.5. The rights of the Customer under this Clause 9 are without prejudice to any other rights it may have under or in connection with the Agreement or at law.
- 9.6. The making of any prior payment shall not prejudice the Customer's rights under this Clause 9.
- 9.7. The Supplier will be responsible for providing all facilities, labour, materials, tools, equipment and for provision and supervision of all personnel necessary for performance of the Services.
- 9.8. The Supplier shall procure that personnel performing Services while on Customer premises shall observe all site rules and regulations applicable to such premises and notified to the Supplier and the Supplier indemnifies the Customer from all claims and liabilities arising from any failure by such personnel to observe such rules and regulations. The Supplier shall remove from performance of the Services forthwith at the Customer's request any of its personnel failing to observe such rules and regulations.
- 10.4. The Supplier shall permit the Customer (or its agents) to undertake reviews and/or audits of its processes, invoices and statements issued to the Customer. If errors or omissions in any of such processes, calculations, invoices or statements are found, the Supplier shall promptly refund to the Customer any excess payments made.
- 10.5. The Customer shall pay the Supplier's proper invoices that are not otherwise in dispute and that are submitted by the Supplier in accordance with the invoicing arrangements set out in the Appointment Letter, in full within 60 days of the date of receipt of the invoice, but time for payment shall not be of the essence. No payment will be made in respect of any invoices received by the Customer more than 180 days after delivery of the Goods and/or Services, unless expressly agreed by the Customer in writing.
- 10.6. Both parties reserve the right to charge interest on any payment not made when due in accordance with Clause 10 ("Late Payment") at the rate of 1% above the Bank of England's base rate from time to time. Interest will be charged from the day that any amount becomes a Late Payment until it represents cleared funds in the relevant party's bank account. The parties acknowledge that this is a substantial contractual remedy for the purpose of Section 8 of the Late Payment of Commercial Debts (Interest) Act 1998.

## PART D – FINANCIAL TERMS

### 10. PRICES AND PAYMENT

- 10.1. The price of the Goods and/or Services shall be stated in the Appointment Letter and, unless otherwise agreed in writing by the Customer, shall be exclusive of value added tax but inclusive of all other charges (including without limitation any charges for packaging, shipping, carriage, insurance or delivery of the Goods). No variation in the price nor extra charges will be accepted by the Customer.
- 10.2. Unless otherwise agreed in writing the Supplier shall send with each delivery and pass to the Customer's representative, a copy of the invoice showing the Net Price of the Goods and/or Services supplied together with any supporting information and documentation the Customer may reasonably require. The invoice must include a valid purchase order number provided by the Customer prior to the delivery of the Goods and/or Services.
- 10.3. Where transactions relating to a purchase of Goods and/or Services are processed using a recognised electronic data interchange process system, the Supplier shall send to the Customer's central accounting office a composite monthly financial statement showing the composition of all invoices raised and the Net Price for all the Goods and/or Services supplied to the Customer during the statement period.

### 11. RIGHTS OF SET-OFF

- 11.1. The Supplier shall not be entitled to deduct from any sum due to any Customer any sum or sums then due or which at any time thereafter may become due to the Supplier from the Customer or any company in the Inchcape Group.
- 11.2. Without prejudice to any other right or remedy which the Customer may have whether under the Agreement or otherwise, if any sum of money shall be recoverable from the Supplier or payable by the Supplier to the Customer the Customer may deduct such sum from any sums payable to the Supplier under the Agreement.

## PART E – GENERAL MATTERS

### 12. CONFIDENTIALITY

- 12.1. Unless otherwise stated in this Agreement, the Supplier shall not disclose the existence of this Agreement without the prior written consent of the Customer.
- 12.2. The Supplier shall not use the name or logos of the Customer or any of the Inchcape Group for advertisement or publicity of any type, whether written or oral, without the prior written consent of the Customer. Similarly, the Supplier shall not communicate with any third party on any matter relating to the Agreement or the business relationship between the parties without the express written consent of the Customer. As damages alone are agreed not to be an adequate remedy for such breach the Supplier agrees that equitable relief (including injunctive relief) at the Supplier's cost in full may be sought by the Customer where the Customer reasonably believes the Supplier may breach this Clause 12.
- 12.3. Each party shall not and shall procure that its employees, agents, sub-contractors and anyone instructed to carry out services on its behalf, shall not, during the term of the Agreement or at any time thereafter disclose any Confidential Information supplied by the other to any person or use any such information, except for the sole purpose of the performance of the Agreement.
- 12.4. The restrictions in Clause 12.3 shall not apply to:



- 12.4.1. the disclosure of information where required by law or order of regulatory authority (provided that to the extent permitted by such law or order, the disclosing party notifies the other of such requirement in advance);
- 12.4.2. information which is made public other than through a breach of this Clause; or
- 12.4.3. information in a party's possession or provided to a party without obligations of confidence.

## 13. DOCUMENTS AND DESIGNS

13.1. All records, tapes and documents (in whatever medium) and any copies thereof relating to the activities of the Customer while in the possession or control of the Supplier, shall be and remain the property of the Customer and shall be delivered up upon the Customer's request or upon termination of the Agreement.

13.2. All documents, plans, drawings and designs supplied by or at the request of the Customer to the Supplier for the purposes of the Agreement shall remain the property of the Customer and be treated as Confidential Information. The Supplier shall treat them as confidential and shall use them only for the purposes for which they were supplied and shall deliver them up to the Customer upon (a) completion of such purposes; (b) the Customer's request; or (c) termination of the Agreement.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1. All Intellectual Property Rights in any documents, plans, drawings, designs, software, photographs, visual aids, videos or other materials originated by the Supplier or its agents, sub-agents or employees for the purposes of the performance of the Agreement ("Works") shall belong to and are hereby assigned to the Customer. The Supplier shall, upon demand, and for the consideration of £1, execute an assignment or confirmatory assignment with full title guarantee of all Intellectual Property Rights in Works (or procure that such an assignment with full title guarantee is obtained from the relevant author/originator) in favour of the Customer with (so far as permitted by applicable law) a waiver of moral rights in them.

14.2. The Supplier shall have no right to use Works other than so far as necessary to perform the Agreement or as expressly permitted by the prior written consent of the Customer.

14.3. All property in any materials supplied by the Customer to the Supplier for the purposes of the Agreement shall remain with the Customer and except for the right to use such materials as necessary to perform the Services or provide the Goods no Intellectual Property Rights in such materials will be granted to the Supplier.

## 15. TERMINATION

15.1. The Customer may terminate the Agreement on giving the Supplier at least 30 days' written notice.

15.2. Where notice is served in accordance with Clause 15.1 the Supplier shall:

- 15.2.1. deliver to the Customer or at its direction destroy all copies of Customer Confidential Information or media recording Works;
- 15.2.2. provide the Customer with a detailed summary of the steps it has taken up to and including the date of its notice in performance of the Agreement;
- 15.2.3. provide the Customer with a detailed analysis of the management information for the preceding 12 months, at a minimum,

information to include spend history, line item breakdown, per site, per brand

15.2.4. pay to the Customer forthwith (i) any payments made by the Customer in respect of undelivered Goods or unperformed Services; (ii) any rebate Payments; and (iii) the amount of any liability of the Customer under any agreements entered into for the purpose of receiving the Goods and/or Services including, without limitation, under equipment leases entered in relation to the provision of Services; and

15.2.5. on demand by the Customer pay to the Customer forthwith any costs incurred by the Customer in obtaining Goods or services equivalent to the Goods or Services from a third party supplier without prejudice to any other rights of the Customer under the Agreement or otherwise.

15.3. Both parties shall be entitled to terminate the Agreement immediately without liability by giving notice in writing at any time if the other party:

- 15.3.1. makes or proposes any voluntary arrangement with its creditors (within the meaning of insolvency legislation) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order, is wound up or goes into liquidation (other than for the purpose of a solvent amalgamation or reconstruction), or;
- 15.3.2. has a receiver, administrative receiver, administrator or similar officer appointed over any of their property or assets, or documents are filed at court or any action taken in relation to the appointment of an administrator;
- 15.3.3. ceases, or threatens to cease, to carry on business;
- 15.3.4. is unable to pay its debts as they fall due; or
- 15.3.5. suffers the occurrence of an event equivalent or similar in effect to any of the above events in any other jurisdiction.

15.4. The Customer shall be entitled to terminate the Agreement immediately without liability by giving notice in writing at any time if:

- 15.4.1. acting reasonably it believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
- 15.4.2. the Supplier fails to fulfil or comply with any of its obligations under the Agreement and such failure is not remediable, or where such failure is remediable the Supplier has failed to remedy such failure within 14 days of written notice from the Customer specifying the failure and requiring its remedy; or
- 15.4.3. there is a change in Control of the Supplier.

15.5. The termination of the Agreement shall be without prejudice to either party's rights then accrued arising from such Agreement or any breach thereof and to any provision of such Agreement which is expressly or by implication intended to survive such termination.

15.6. On termination of the Agreement:

- 15.6.1. the Customer may issue the Supplier with a letter of termination ("Termination Letter") of the Supplier as an authorised supplier of Goods and/or Services and the Supplier shall comply with the terms of the Termination Letter; and
- 15.6.2. the Supplier shall not be entitled to payment

for any costs incurred, or in relation to any Goods supplied and/or Services performed after the effective date of such termination. The Customer shall not have any liability for any payment or other obligation in respect of such Goods and/or Services.

## 16. INDEMNITIES

**16.1.** Without prejudice to any other right which the Customer may have, the Supplier shall indemnify, defend and hold harmless the Customer and its employees, agents, successors and assigns from and against all claims, demands, damages, fines, liabilities, costs and expenses (including management and all legal costs) that arise out of:

- 16.1.1. breach of any warranty of the Supplier in relation to the Goods and/or Services;
- 16.1.2. breach by the Supplier of any term of the Agreement;
- 16.1.3. breach by the Supplier, or by any company within its Control or under common Control with it, of any Regulatory Requirements and Data Protection Laws;
- 16.1.4. negligence for which the Supplier is responsible in relation to Goods and/or Services;
- 16.1.5. damage to any of the Customer's property including, without limitation, any premises owned or occupied by the Customer and all vehicles or other belongings;
- 16.1.6. any infringement or alleged infringement of Intellectual Property Rights or any other rights whatsoever of any other person arising in connection with Goods and/or Services (whether occurring by manufacture, importation, purchase, use, resale or otherwise);
- 16.1.7. any claim by any customers of the Customer in respect of the Goods as supplied by and/or Services as performed by the Supplier.

**16.2.** The Customer shall notify the Supplier of any claims to which the indemnities in this Clause may apply ("Relevant Claim").

**16.3.** The Customer shall consult with the Supplier before settling or paying any Relevant Claim, but shall be entitled at its absolute discretion to dispose of Relevant Claims as it wishes.

**16.4.** The Customer shall use its reasonable endeavours to mitigate its losses suffered as a result of a Relevant Claim.

## 17. LIABILITY

**17.1.** The Customer shall not under any circumstances be liable for any:

- 17.1.1. losses of profits, business, revenue, goodwill, anticipated savings, and business opportunities;
- 17.1.2. financial or economic loss; or
- 17.1.3. special, indirect or consequential losses,

even if foreseeable by or in the contemplation of the parties.

**17.2.** The total aggregate liability of the Customer under or in connection with the Agreement for all claims whether in contract, tort or otherwise, shall not exceed the amounts payable by the Customer under such Agreement.

**17.3.** Nothing in these Terms shall limit the liability of a party for personal injury or death caused by its negligence, for fraud or under Part I of the Consumer Protection Act 1987.

## 18. INSURANCE

Registered in England & Wales No 194561  
Registered office: First Floor, Unit 3140, Park Square, Solihull Parkway, Birmingham Business Park, Birmingham, B37 7YN  
Inchcape Retail Limited is authorised and regulated by the Financial Conduct Authority

**18.1.** The Supplier shall carry and maintain in force, for the duration of the Agreement, the following insurances, to be evidenced by certificates of insurance made available to the Customer within 7 days of request:

- 18.1.1. Employer's liability insurance in accordance with all statutory requirements that may be applicable to its employees, agents or sub-contractors engaged directly or indirectly in the performance of the Agreement;
- 18.1.2. Third Party liability insurance (including Product liability) insurance or similar insurance(s) in the amount of at least £10,000,000 for any one incident and unlimited in the period of insurance but in the aggregate in respect of product liability. The Supplier represents and warrants that such insurance covers any loss and damage that the Customer may suffer as a result of its acts or omissions in relation to Goods and Services; and
- 18.1.3. Motor vehicle liability insurance or similar insurance(s), complying with the Road Traffic Legislation and all other laws relative to motor vehicles in respect of all vehicles (whether or not owned or hired) to be used in connection with the performance of the Agreement. This insurance shall provide unlimited cover for personal injury including death and shall be in the amount of (i) at least £20,000,000 for the loss of or damage to material property in connection with the use of any motor car and (ii) in the amount of at least £5,000,000 for the loss of or damage to material property in connection with the use of any other insured vehicle.
- 18.1.4. Insurance cover in respect of all risks of property physically lost, destroyed or damaged extending to all real and personal property owned in whole or in part by the Supplier and property held in trust or for which the Supplier may have an obligation to insure or for which it deems itself responsible. Insurance cover shall extend to any premises owned, leased, used or occupied by the insured, or for which they are responsible, including premises used for storage and property whilst in transit. The Supplier agrees that the insurance policy shall have an indemnity limit of £20,000,000 for each and every occurrence of Property Damage and Business Interruption combined. The Supplier agrees that the insurance policy shall note the interest of the Customer by means of an Other Interests clause, or similar.
- 18.1.5. Professional Indemnity cover for indemnity against sums which the Supplier is legally liable to pay as damages and claimants costs as a result of a wrongful act committed by the Supplier, any employee (any person under a contract of service with the Supplier or its predecessors), its agent, its predecessors, any other person firm or company acting jointly with the Supplier. The cover shall be a claims made basis of cover and shall be in the sum of at least £10,000,000. The Insurance cover shall extend to inadvertent breach of confidential information, patents, copyrights or the unauthorised use or infringement of the systems or designs of others whether negligence is proved or not. The policy shall contain a clause to the effect that the relevant insurers shall agree to waive all rights of subrogation and/or claims for contributory

negligence against the Customer, its employees, servants, agents and contractors.

**18.2.** All Supplier insurance policies shall contain a clause to the effect that the relevant insurers shall agree to waive all rights of subrogation and/or claims for contributory negligence against the Customer, its employees, servants, agents and contractors

**19. FORCE MAJEURE**

**19.1.** Neither party shall be liable for any delay in performance of failure to perform any of its obligations under the Agreement insofar as the delay or failure is due to any event beyond the reasonable control of that party ("Force Majeure Event"), as defined in Clause 19.2.

**19.2.** Force Majeure Event shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: acts of God; epidemic or pandemic; expropriation or confiscation of facilities; any form of Government intervention; war; hostilities; terrorist activity; local or national emergency; sabotage or riots; floods or unusually severe weather conditions which could not reasonably have been anticipated; fire; explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the affected party's workforce.

**19.3.** The Customer may suspend the date of delivery or payment or may cancel the Agreement or reduce the volume of the Goods ordered and/or Services performed if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event.

**20. MANAGEMENT INFORMATION AND AUDIT**

**20.1.** The Supplier will provide the Customer with management information regarding the purchase activity for the Goods or Services by the Customer as set out in the Agreement on a monthly basis 10 working days following the end of each month. Such information shall include:

- 20.1.1. overall invoiced values for the then current month and year to date;
- 20.1.2. overall volumes of purchases of Goods or Services for the current month and year to date;
- 20.1.3. reports on service delivery with reference to any service criteria as set out in the Agreement;
- 20.1.4. information as specified by the Customer regarding overall invoiced values for the then current month and year to date and comparison of the same volumes net of any other fees due to the Customer; and
- 20.1.5. such other information or reports as the Customer may reasonably require from time to time.

**20.2.** The Customer reserves the right to appoint a third party audit service provider ("Nominated Audit Company") to audit the Supplier from time to time either before the Supplier is appointed to deliver the Goods and/or Services or during the term of the Agreement.

**20.3.** In the event that the Customer appoints a Nominated Audit Company to conduct an audit on the Supplier, the Supplier will be charged and invoiced directly for the audit services by the Nominated Audit Company at the cost notified to the Supplier by the Customer from time to time and the Supplier agrees to pay the Nominated Audit Company directly for providing such services.

**20.4.** In the event that the Supplier fails to pay the audit charge(s), the Customer can recover the audit charge(s) from the Supplier directly or indirectly (through deductions from amounts payable to the Supplier), and then reimburse the Nominated Audit Company accordingly.

**21. DATA PROTECTION**

**21.1.** The following definitions apply:

"Customer Personal Data" means any Personal Data provided by or on behalf of the Customer; "data controller", "data processor", "data subject", "Personal Data" and "processing" bear the respective meanings given them in accordance with Data Protection Laws;

"data protection principles" means the data protection principles set out in the Data Protection Act 2018; and "data" includes Personal Data.

**21.2.** The Customer shall own all rights, title and interest in and to all of Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Except as expressly stated herein, the Agreement does not grant the Supplier any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of Customer Data. The parties acknowledge that no Intellectual Property Rights subsist in any Customer Personal Data.

**21.3.** The Supplier shall:

- 21.3.1. only carry out processing of any Customer Personal Data on the Customer's instructions;
- 21.3.2. implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss, destruction, alteration, disclosure or damage;
- 21.3.3. not transfer Customer Personal Data to any country outside the European Economic Area without the prior written authorisation by the Customer which may be granted subject to such conditions as the Customer deems necessary;
- 21.3.4. not subcontract any processing of the Customer Personal Data without the prior written authorisation of the Customer;
- 21.3.5. ensure that access to the Customer Personal Data is limited to those employees or authorised subcontractors who need access to the Customer Personal Data to meet the Supplier's obligations under the Agreement and that all employees and authorised subcontractors are informed of the confidential nature of the Customer Personal Data;
- 21.3.6. comply with its obligations under any applicable Data Protection Laws, and shall not, by act or omission, put the Customer in breach of, or jeopardise any registration under, any such Data Protection Laws;
- 21.3.7. promptly and fully notify the Customer within two (2) working days in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require;
- 21.3.8. promptly and fully notify the Customer within two (2) working days in writing if any Customer Personal Data has been disclosed in non-compliance with this Clause 21;
- 21.3.9. indemnify the Customer against any loss or damage suffered by the Customer in relation

to any breach by the Supplier of its obligations under this Clause 21;

- 21.3.10. take reasonable precautions to preserve the integrity of any Customer Data or other data which it processes and to prevent any corruption or loss of such data.

## 22. COMPLIANCE OBLIGATIONS

22.1. The Supplier shall:

- 22.1.1. comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("Relevant Requirements");
- 22.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 22.1.3. have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 22.1.4. promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement;
- 22.1.5. immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier and acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees or as direct or indirect owners at the date of the Agreement).

22.2. Without prejudice to Clause 22.1, the Supplier shall ensure that any person associated with the Supplier who is performing services or providing Goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 22 ("Relevant Terms"). The Supplier shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

22.3. Breach of this Clause 22 shall be deemed a material breach, which is irremediable.

22.4. For the purpose of this Clause 22, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 22 a person associated with the Supplier includes any consultant or subcontractor of the Supplier.

22.5. The Supplier shall at all times comply with:

- 22.5.1. all applicable laws, regulations and sanctions relating to modern slavery and human trafficking including but not limited to the Modern Slavery Act 2015;
- 22.5.2. all applicable laws, regulations and sanctions relating to tax evasion including but not limited to the Criminal Finances Act 2017; and
- 22.5.3. any anti-slavery and anti-tax evasion policy

adopted by the Customer from time to time.

22.6. The Supplier shall have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including reasonable prevention procedures under the Criminal Finance Act 2017, to ensure compliance with the Criminal Finance Act 2017 and will enforce them where appropriate. The Supplier shall implement and maintain throughout the duration of the Agreement due diligence procedures for its own suppliers, permitted sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking or tax evasion in its supply chains.

22.7. The Supplier shall notify the Customer as soon as it becomes aware of:

- (a) any breach, or potential breach, of any anti-slavery or anti-tax evasion policy adopted by the Customer from time to time; or
- (b) any actual or suspected slavery or human trafficking or tax evasion in a supply chain which has a connection with the Agreement.

22.8. The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure compliance with all environmental regulations, labour laws, and best practice in the Supplier's industry.

22.9. The Supplier shall comply with such corporate social responsibility, governance, sustainability, environmental and other policies of the Inchcape Group and such other policies as the Customer may notify to the Supplier from time to time.

## 23. SUB-CONTRACTING AND ASSIGNMENT

23.1. The Supplier shall not delegate, sub-contract or otherwise arrange for a third party to perform any part of its obligations under the Agreement (except in respect of delivery of the Goods whereby any such third party shall be deemed to acting as authorised agent for the Supplier) without the Customer's prior written consent. No such consent shall create any contractual relationship between the Customer and the sub-contractor.

23.2. The Supplier shall be fully responsible for those elements performed by its sub-contractors (including any employee or agent of a sub-contractor) and the Supplier is at all times liable to the Customer for the acts and omissions of all its sub-contractors (including any employee or agent of a sub-contractor) to the same extent as its own acts and omissions.

23.3. The Supplier shall maintain all records and documentation in relation to such sub-contract, including, without limitation, correspondence between it and sub-contractors and shall preserve such documents for six years after termination of the Agreement. Such records and documentation shall be available to the Customer as part of the Customer's rights of audit under the Agreement.

23.4. The Supplier shall not assign, transfer or otherwise dispose of all or any part of its obligations under the Agreement without the prior consent in writing of the Customer such consent not to be unreasonably withheld or delayed.

23.5. The Customer may assign its rights under the Agreement in whole or part.

## 24. NOTICES

24.1. Any demand, notice or communication shall be deemed to have been duly served:

- 24.1.1. if delivered by hand, when left at the proper address for service (except that where such



delivery is not on a working day service shall be deemed to occur on the next working day);

- 24.1.2. if given or made by prepaid first-class post, two working days after being posted.
- 24.1.3. if delivered by e-mail (when an undelivered notification has not been received within 4 hours) shall be deemed to be received on the same working day

**24.2.** Any demand notice or communication shall be made in writing to the recipient at its registered office and in the case of the Customer and shall be marked for the attention of the Head of Procurement.

**25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

**25.1.** Subject to the remaining provisions of this Clause 25, any entity in the Inchcape Group (each a "Third Party") shall have the benefit of the Agreement and may enforce the terms of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. Except as provided in the preceding sentence, the parties do not intend any part of the Agreement to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, but this shall not affect any other right or remedy of a third party that is available or exists apart from the Contracts (Rights of Third Parties) Act 1999.

**25.2.** Notwithstanding the provisions of Clause 25.1, the Agreement may be terminated, rescinded or varied in any way by the parties without the consent of Third Parties.

**26. NON-SOLICITATION**

The Supplier shall not, during the term of the Agreement and for 6 months after its expiry or termination, solicit any person employed or engaged by any company in the Inchcape Group concerned with the Goods and/or Services, the subject of the Agreement, but this shall not prevent the employment or engagement of any person who applies in good faith to any openly advertised job vacancy.

**27. TRANSFER OF EMPLOYEES**

**27.1.** In the event that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or any subsequent or similar applicable legislation) (the "Regulations") apply to the expiry or termination of the Agreement the Supplier shall (not less than 30 days prior to the expiry or termination of the Agreement) to the extent lawfully permitted provide the Customer with the employee liability information (as defined in the Regulations) for all personnel engaged in the provision of the Services ("Relevant Employees").

**27.2.** The Supplier shall indemnify the Customer and any third party to whom a person's employment transfers under the Regulations against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Customer and/or such third party in connection with or as a result of:

- 27.2.1. any claim or demand by or on behalf of any Relevant Employee arising from any act, fault or omission of the Supplier on or before the Transfer Date;
- 27.2.2. any failure by the Supplier to comply with its obligations under the Regulations unless such failure arises from the failure of the Customer to comply with its obligations under the Regulations;
- 27.2.3. a claim by any person whose employment transfers or is alleged to have transferred under the Regulations but whose name is not

notified to the Customer prior to the relevant alleged Transfer Date;

- 27.2.4. the service of a notice terminating the employment of a person whose employment has transferred under the Regulations within 6 months after the Transfer Date (including without limitation all statutory or contractual redundancy payments payable in respect of such person, and any compensation or damages paid to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages).

**27.3.** In this Clause the "Transfer Date" is the date of transfer of a relevant person's employment under the Regulations.

**28. GENERAL**

**28.1.** The Supplier shall comply with all Inchcape policies which are published from time to time on <https://www.inchcape.com/en/responsibility/policy-statements.html> including but not limited to the Inchcape Supplier Code of Conduct <https://www.inchcape.com/content/dam/inchcape/corporate/responsibility/supplier-code-of-conduct-2021.pdf>

**28.2.** No addition to, variation of or other amendment or purported amendment to the Agreement shall be binding on the parties unless expressly states as such, made in writing and signed by a duly authorised representative of both parties.

**28.3.** Where a dispute arises in relation to this Agreement, the Supplier shall continue to perform all services under this Agreement, unless otherwise directed by the Customer.

**28.4.** The parties agree that they shall attempt to settle any dispute arising out of the Agreement through consultation and negotiation in the spirit of mutual friendship and cooperation. If any dispute arises in connection with the Agreement directors or other senior representatives of the parties with authority to settle the dispute will, within 28 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is financial requiring possible reconciliation of invoices and/or payments the parties shall consider the appointment of an independent accountant to examine the documentation and the Agreement and to produce a report recommending, but not binding the parties, to certain actions. The independent accountant shall act as an early neutral evaluator and not as arbitrator and the costs for the neutral evaluation shall be agreed among the parties.

**28.5.** If the dispute is not resolved at the meeting referred to in clause 28.4, the parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

**28.6.** The commencement of a neutral evaluation or mediation will not prevent the parties commencing or continuing court proceedings.

**28.7.** Clauses 28.3 – 28.6 shall not prevent a party from issuing proceedings if interim relief from a court is necessary to prevent serious and irreparable injury to one party or to

others.

- 28.8.** The parties are independent contractors and not joint venturers, partners or agents of each other and neither party shall have any authority to act on behalf of the other.
- 28.9.** If any term of the Agreement is held to be invalid, void or unenforceable, then that term or provision shall be inoperative and void to the extent necessary to comply with law, but the remaining terms shall nevertheless continue in full force and effect and the rights and obligations of the parties shall be construed as if such agreement did not contain that particular term held to be invalid, void or unenforceable.
- 28.10.** A waiver of any right or remedy under this Agreement 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 this Agreement 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 this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 28.11.** The Agreement shall be governed and construed in all respects in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.
- 28.12.** The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous agreements or understandings between the parties in relation to such matters. Each Party acknowledges and agrees that in entering into such agreements, it does not rely on and will have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party or not) which is not expressly set out in such agreement. Nothing in this Clause will, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.
- 28.13.** Where applicable, clauses 1, 2.2, 2.4, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27 and 28 shall survive termination of the Agreement.