



# Terms and Conditions

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Date: October 2018

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# 1. Interpretation

1.1. In these conditions:

**Change Notice:** as defined in condition 8.1 of these Conditions.

**Client:** the entity named on the Schedule for whom SITOC has agreed to provide the Services in accordance with these Conditions;

**Conditions:** the terms and conditions as set out in this document;

**Contract:** the Conditions, the details set out in the Schedule or any applicable Change Notice.

**Data Protection Legislation:** the General Data Protection Regulations, the Data Protection Act 2018 or any applicable privacy legislation;

**Equipment:** any equipment, hardware which SITOC will supply to the Client as is set out in the Schedule;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Project Services:** the detailed plan in the Schedule describing the Project Services and setting out the estimated timetable (including without limitation project milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by SITOC in accordance with the Contract.

**Retained Services:** any Service regularly provided by SITOC to the Client whether this is MTS retained Service or HTS services or any other assistance offered.

**Schedule:** the attached document which sets out the details of the Client's requirements;

**Services:** means the Retained Services or Project Services to be provided by SITOC for the Client;

**SITOC:** means SITOC Limited (company number 5278300).

**Turtle Entity:** any company that is affiliated or associated to SITOC.

- 1.2. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.3. Any such expressions as appear herein shall be deemed to include the masculine, feminine or plural thereof where the context so admits.

## 2. Engagement

- 2.1. These Conditions apply regardless of whether the Client requires Project Services, will buy Equipment or receive Retained Services.
- 2.2. The Client hereby engages SITOC and SITOC hereby accepts such engagement to perform the Services for the Client as specified in the Schedule to which these Conditions are attached.
- 2.3. The Client's purchase order constitutes an offer by the Client to purchase the Equipment specified in these Conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by SITOC, or SITOC's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these Conditions. The Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

## 3. Term

- 3.1. Subject to condition 18:
  - 3.1.1. SITOC shall commence the Services on the date specified in the Schedule, and continue to provide the Services until the date specified in the Schedule.
  - 3.1.2. the Retained Services shall continue the latter of any dates specified in the Schedule or the termination of the Contract by either party giving to the other not less than 90 days prior written notice.
  - 3.1.3. Once an order for Equipment has been agreed the Client cannot terminate without incurring the agreed price.

## 4. Project Services

- 4.1. SITOC shall provide a project plan which will be mutually agreed in writing between SITOC and the Client. This Contract will be completed when the authorised project services are all delivered.
- 4.2. No employee or agent of SITOC has authority to vary these Conditions orally, and no variation of these Conditions shall be effective or binding on SITOC unless confirmed in writing on or after the date hereof by SITOC's authorised representative.
- 4.3. It is agreed that these Conditions prevail over the Client's terms and conditions of purchase unless the Client's terms and conditions are accepted by SITOC in writing.
- 4.4. The Client's purchase orders shall constitute offers to buy only and the contract between SITOC and the Client shall come into effect upon SITOC's acceptance, whether upon SITOC's formal acknowledgements of the order or otherwise, of the Client's order.

## 5. Delivery of Project Services

- 5.1. SITOC shall use all reasonable endeavours to deliver the Project Services by the date quoted for completion but such date is to be treated as an estimate only and completion may be postponed because of conditions beyond SITOC's reasonable control. In no event shall SITOC be liable for any loss or damage whatsoever arising directly or indirectly from any failure to effect completion on or by such date or otherwise howsoever caused.
- 5.2. Delivery of the Project Services shall be complete when the SITOC has demonstrated to the Client that the work satisfies the "acceptance criteria" specified in the Schedule.

## 6. Equipment

- 6.1. The quantity and description of the Equipment shall be as set out in the Schedule, quotation or purchase order.
- 6.2. All prices shall be as stated in the project plan. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

- 6.3. All samples, drawings, descriptive matter, specifications and advertising issued by SITOC, and any descriptions or illustrations contained in SITOC's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 6.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by SITOC shall be subject to correction without any liability on the part of SITOC.
- 6.5. SITOC's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.
- 6.6. The Client shall be responsible (at the Client's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If SITOC is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, SITOC may levy additional charges to recover its loss arising from this event.
- 6.7. The Client shall be deemed to have accepted the Equipment when the Client has had two days to inspect it after delivery and has not rejected the equipment by writing to SITOC setting out in sufficient detail the grounds for rejection.
- 6.8. SITOC reserves the right, by giving notice to the Client at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to SITOC which is due to market conditions or any factor beyond the control of SITOC (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give SITOC adequate information or instructions.

## 7. Risk and property

- 7.1. The Equipment shall be at the risk of SITOC until delivery to the Client at the place of delivery specified in SITOC's acknowledgement of order. SITOC shall off-load the Equipment at the Client's risk.
- 7.2. Ownership of the Equipment shall pass to the Client on the later of completion of delivery (including without limitation off-loading), or when SITOC has received in full in cleared funds all sums due to it in respect of the Equipment.

- 7.3. Until ownership of the Equipment has passed to the Client under Condition 7.2, the Client shall hold the Equipment on a fiduciary basis as SITOC's bailee.
- 7.4. Until ownership of the Equipment is transferred to the Client in accordance with Condition 7.2, the Client grants SITOC, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Client's right to possession has terminated, to remove it. All costs incurred by SITOC in repossessing the Equipment shall be borne by the Client.
- 7.5. On termination of the Contract for any reason, SITOC's (but not the Client's) rights in this Condition 7 shall remain in effect.

## 8. Variation and Amendments

- 8.1. The Client must submit any requests for changes, additions or other variations to the Services in writing to SITOC. SITOC will issue a Change Notice specifying any additional work, additional costs and impact on delivery schedules and completion dates. Once issued such Change Notice must be authorised by the Client before SITOC accepts the change.

## 9. SITOC's duties

- 9.1. SITOC agrees to advise and assist the Client as may be expressly set out in the Schedule.
- 9.2. In the performance of such duties SITOC shall comply with all reasonable requests and directions of the Client including complying with all reasonable health, safety and security policies and regulations advised to SITOC by the Client while SITOC is working on the Client's premises.
- 9.3. SITOC warrants that as far as this is possible in all the circumstances all Services will be performed:
  - 9.3.1. In such a way as not to cause any fault or malfunction in the supported software or the system of the Client;
  - 9.3.2. in such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
  - 9.3.3. in accordance with all applicable laws and regulations;

- 9.3.4. with that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced provider of services similar to the Services seeking in good faith to comply with its contractual obligations and applicable laws.

## 10. Duties of the Client

- 10.1. The Client shall provide (where applicable) access to the necessary personnel and premises of the Client and to the Client's systems and software and provide such other assistance as may be necessary for the completion of the Services.
- 10.2. The Client agrees to advise SITOC of any circumstances (including any relevant changes) that it considers may affect the performance of the Services in any material way and acknowledges that should it not do so then that will affect SITOC's ability to deliver the Services.
- 10.3. The Client shall cooperate with SITOC in respect of the Services and use reasonable endeavours to supply, at its expense, all agreed documents or other materials, and all necessary data or other information relating to the Service (and ensure the accuracy of the same), within a reasonable time.

## 11. Payment

- 11.1. SITOC reserves the right to invoice for goods and services provided, or in advance if provided for in the Schedule.
- 11.2. Retained Services shall be paid for by direct debit mandate. Any service set-up and additional billing that might occur over and above the retained contract costs will be payable 30 days from invoice date.
- 11.3. The Client shall pay SITOC's invoices for Project Services within 30 days from the date of presentation of the invoice. All travel and related expenses will be invoiced as accrued at cost and approved in advance by the Client.
- 11.4. If the Client fails to make payment in full on the due date, then without prejudice to any other right or remedy available to SITOC, SITOC shall be entitled to:
- 11.4.1. terminate the Contract;
- 11.4.2. suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Client;



11.4.3. a general lien on all Equipment and property belonging to the Client, exercisable in respect of all sums lawfully due from the Client to SITOC. SITOC shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

11.4.4. suspend all Services until payment has been made in full.

11.4.5. pay interest to SITOC on such sums from the due date for payment at a rate equal to 4% above the base rate of the Bank of England.

11.5. All payments payable to SITOC under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

## 12. Cancellation and Rescheduling

12.1. The Client can cancel its order for any Services. Any cancellation request must be received by SITOC at least 5 days before commencement of the Services and SITOC reserves the right to make a reasonable administration charge.

12.2. SITOC shall endeavour to comply with reasonable requests by the Client for postponement of delivery of Services but shall be under no obligation to do so and where delivery is postponed by agreement otherwise than due to default by SITOC, the Client shall pay all costs and expenses occasioned thereby and payment for the Services delivered prior to the postponement shall be made within 30 days of receiving an invoice for such Services.

## 13. Quantum Meruit

13.1. The provisions of this Condition 13 shall only apply in respect of Project Services.

13.2. If Project Services are only partly completed and irrespective of why this is the case then SITOC shall be entitled to payment on quantum meruit basis in respect of all work done by SITOC. Any such payment will be demanded without prejudice to SITOC's other rights and remedies.

## 14. Intellectual Property Rights

14.1. The Intellectual Property Rights prepared or created by SITOC prior to this Agreement shall be SITOC's property unless otherwise expressly agreed in writing between the parties. SITOC grants the Client an irrevocable, worldwide, non-exclusive, sub-licensable, royalty free licence to any such materials used in connection with the provision of the Services.

- 14.2. The Client shall own all Intellectual Property Rights in any report, documentation, information, or other material which SITOC may have access to in providing the Services, or which are created by either party in connection with the provision of the Services. The Client grants SITOC a limited licence to use such reports, documents, information and other materials only for the purpose of providing the Services and shall on the Client's request provide a full copy of and/or destroy all such reports, documents, information and other materials promptly upon termination of this Agreement.
- 14.3. SITOC shall indemnify and hold harmless the Client in respect of any third party claims that any deliverables infringe a third party's intellectual property rights.

## 15. Confidentiality and Non-Disclosure

- 15.1. SITOC and the Client shall not, other than with the prior written consent of the other, during or after the termination or expiry of this Agreement, disclose any information which the other has specifically stated is confidential, or which is by its nature confidential.
- 15.2. The foregoing provisions shall not prevent the disclosure or use by SITOC of any information which is or hereafter, through no fault of SITOC, becomes public knowledge or to the extent permitted by law.
- 15.3. This condition 15 shall survive the termination of this Agreement.

## 16. Liability and Insurance

- 16.1. The following provisions set out the entire financial liability of SITOC (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 16.1.1. any breach of the Contract howsoever arising; and
- 16.1.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.
- 16.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 16.3. If SITOC's employees, contractors or agents suffer any personal injury while performing the Services at the Client's premises as a direct result of the Client's negligence or breach of this agreement, the Client shall indemnify SITOC in respect of any third party claims.

- 16.4. If the Client is dissatisfied with SITOC's performance of the Services the Client shall report the matter to SITOC who will promptly attempt to rectify the complaint in question. Unless the problem relates to anything that the Client has done or omitted to do such rectification shall be done at SITOC's cost
- 16.5. SITOC shall ensure it has the necessary professional indemnity insurance cover in place to cover potential claims in the event that the Client suffers a loss as a result of proven negligence on the part of SITOC in the execution of the work/services specified in this contract.
- 16.6. Nothing in these conditions excludes or limits the liability of SITOC for:
- 16.6.1. death or personal injury caused by SITOC's negligence; or
- 16.6.2. fraud or fraudulent misrepresentation.
- 16.7. Subject to condition 16.1.2 and condition 16.6 SITOC shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 16.7.1. loss of profits; or
- 16.7.2. loss of business; or
- 16.7.3. depletion of goodwill or similar losses; or
- 16.7.4. loss of anticipated savings; or
- 16.7.5. loss of goods; or
- 16.7.6. loss of contract; or
- 16.7.7. loss of use; or
- 16.7.8. loss or corruption of data or information; or
- 16.7.9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.8. Regarding Services SITOC's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 150% of the charges paid by the Client in the preceding year or if in the first year the charges that would be paid by the Client during the first year

- 16.9. The provisions of clause 17 shall govern any breach of Contract in respect of Equipment.
- 16.10. SITOC will not be liable if the breach is caused by the Client not adhering to its obligations under the agreement.

## 17. Equipment Warranty

- 17.1. If requested by the Client SITOC will test the Equipment.
- 17.2. SITOC undertakes (subject to the remainder of this condition 17), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within six months of delivery and installation.
- 17.3. SITOC shall not in any circumstances be liable for a breach of the warranty contained in condition 17 unless:
- 17.3.1. the Client gives written notice of the defect to SITOC within seven days of the time when the Client discovers or ought to have discovered the defect; and
- 17.3.2. after receiving the notice, SITOC is given a reasonable opportunity of examining such Equipment and the Client (if asked to do so by SITOC) returns such Equipment to SITOC's place of business at SITOC's cost for the examination to take place there.
- 17.4. SITOC shall not in any circumstances be liable for a breach of the warranty in condition 17 if:
- 17.4.1. the Client makes any use of Equipment in respect of which it has given written notice under condition 17.3.1; or
- 17.4.2. the defect arises because the Client failed to follow SITOC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
- 17.4.3. the Client alters or repairs the relevant Equipment without the written consent of SITOC.

## 18. Termination

- 18.1. This Agreement shall terminate at the latter of (1) on the completion of the Services; (2) the date of delivery of the Equipment; (3) at the date specified in the Contract for the expiry of those Services. Notwithstanding any other provision of this Agreement, the Client shall be entitled to terminate this Agreement or any of the Services under this Agreement for convenience by providing 90 days' notice in writing.
- 18.2. Notwithstanding any other provisions herein contained this Agreement may be terminated forthwith by either party by notice in writing if any of the following events shall occur viz.:
- 18.2.1. If the other party shall at any time be in default under this Agreement and shall fail to remedy such default within thirty (30) days from receipt of notice in writing from the party not in default specifying such default;
- 18.2.2. If the other party shall have a petition presented against it by a creditor for its winding up or shall enter into any liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), shall call any meeting of its creditors, shall have an administrator appointed, be unable to pay its debts or shall cease to carry on business.
- 18.3. If any such event referred to in condition 18.2 shall occur, termination shall become effective forthwith or on the date set forth in such notice.
- 18.4. The expiry or termination of this Agreement shall be without prejudice to the rights of the parties accrued up to the date of such expiry or termination.
- 18.5. If any such event referred to in condition 18.2.2 shall occur, notice shall be given to the other party within seven (7) days of the event. If action has been taken to have a petition struck out, judgement set aside, or the event otherwise satisfactorily resolved, relevant evidence shall be given to the other party which may then confirm that the termination provisions in condition 18.1 shall be waived.

## 19. Data Protection

- 19.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this condition 19.1.

- 19.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and SITOC is the data processor and that the Services involve the processing of personal data (where Personal Data, Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 19.3. Without prejudice to the generality of condition 19.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to SITOC for the duration and purposes of this agreement.
- 19.4. Without prejudice to the generality of condition 19.1, SITOC shall, in relation to any Personal Data processed in connection with the performance by SITOC of its obligations under this agreement:
- 19.4.1. process that Personal Data only on the written instructions of the Client unless SITOC is required by Data Protection Legislation to otherwise process that Personal Data;
- 19.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 19.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 19.4.4. not transfer any Personal Data outside of the European Economic Area
- 19.4.5. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

19.4.6. notify the Client without undue delay on becoming aware of a Personal Data breach;

19.4.7. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Data Protection Legislation to store the Personal Data.

19.5. Either party may, at any time on not less than 30 days' notice, revise this condition 19.5 by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## 20. Force Majeure

20.1. Neither party shall be liable to the other for any delay or failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from any cause or causes beyond its reasonable control including without limitation, any of the following: act of God, government act, war, fire, flood, explosion or civil commotion.

## 21. Enticement/non-solicitation

21.1. The Client undertakes that it shall not either during such times when SITOC is providing Services or within six months after termination of this Contract employ or offer employment to any employee of SITOC or engage any person who was a contractor of SITOC who provided the Services to the Client.

21.2. The provisions of condition 21.1 shall extend to any employee or contractor of a Turtle Entity who has had personal dealings with the Client.

## 22. Assignment

22.1. The Client shall not, without the prior written consent of SITOC, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2. SITOC may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 23. Entire Agreement

23.1. This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

- 23.2. Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty.

## 24. General

- 24.1. In the event that any of the terms contained herein are determined by any competent authority to be invalid or unenforceable to any extent, such term shall to that extent be severed from the body of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by the Law.
- 24.2. Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post or via electronic mail and in the case of post will be deemed to have been given 2 working days after the date of posting.
- 24.3. The parties hereby agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 24.4. No third party shall acquire rights arising from the Contracts (Rights of Third Parties) Act 1999.