

Metalcraft Direct Ltd Terms and Conditions for the Purchase of Services

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Charges"	the charges payable by Metalcraft for the supply of the Services in accordance with clause 6 (Charges and payment).
"Commencement Date"	has the meaning given in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 14.4.
"Contract"	the contract between Metalcraft and the Supplier for the supply of Services in accordance with these Conditions.
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
"Data Protection Legislation"	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including the privacy of electronic communications).
"Deliverables"	all documents, products and 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, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
"Force Majeure Event"	any circumstance not within a party's reasonable control, including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) interruption or failure of utility service.

"Intellectual Property Rights"

patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Metalcraft"

Metalcraft Direct Ltd, incorporated in England under company number 14636554 and having its registered office at

Suite 537, The Atrium, 1 Harefield Road,
Uxbridge, United Kingdom, UB8 1EX

"Metalcraft"	has the meaning set out in clause 3.3(j).
"Materials" "Order"	Metalcraft's order for the supply of Services, as set out in Metalcraft's purchase order form.
"Services"	the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Specification.
"Specification"	the description or specification for the Services agreed in writing by Metalcraft and the Supplier.
"Supplier"	the company or entity from whom Metalcraft purchases the Services.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and emails.

2. Basis of contract

- 2.1 The Order constitutes an offer by Metalcraft to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. Supply of Services

- 3.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to Metalcraft in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that Metalcraft notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.3 In providing the Services, the Supplier shall:
- (a) co-operate with Metalcraft in all matters relating to the Services, and comply with all instructions of Metalcraft;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that Metalcraft expressly or impliedly makes known to the Supplier;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Metalcraft, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services;
 - (i) observe all health and safety rules and regulations and any other security requirements that apply at any of Metalcraft's premises;

- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by Metalcraft to the Supplier (**Metalcraft Materials**) in safe custody at its own risk, maintain the Metalcraft Materials in good condition until returned to Metalcraft, and not dispose or use the Metalcraft Materials other than in accordance with Metalcraft's written instructions or authorisation;
- (k) not do or omit to do anything which may cause Metalcraft to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Metalcraft may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the Specification.

4. Metalcraft's remedies

- 4.1 If the Supplier fails to perform the Services by the applicable dates, Metalcraft shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
 - (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by Metalcraft in obtaining substitute services from a third party;
 - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by Metalcraft which are in any way attributable to the Supplier's failure to meet such dates.
- 4.2 If the Services are not performed by the applicable date, Metalcraft may, at its option, claim or deduct 10% of the price of the Services for each week's delay in performance of the Services by way of liquidated damages, up to a maximum of 30% of the total price of the Services. If Metalcraft exercises its rights in respect of late performance under this clause 4.2 it shall not be entitled to any of the remedies set out in clause 4.1 in respect of the late performance of the Services.
- 4.3 If the Supplier has supplied Services that do not comply with the requirements of clause 3.3(d) and/or clause 3.3(f) then, without limiting or affecting other rights or remedies available to it, Metalcraft shall at Metalcraft's option have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
 - (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by Metalcraft in obtaining substitute services or deliverables from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by Metalcraft arising from the Supplier's failure to comply with clause 3.3(d) and/or clause 3.3(f).
- 4.4 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.5 Metalcraft's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

5. Metalcraft's obligations

- 5.1 Metalcraft shall:
- (a) provide the Supplier with reasonable access at reasonable times to Metalcraft's premises if and as necessary for the purpose of providing the Services; and
 - (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

6. Charges and payment

- 6.1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Metalcraft, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice Metalcraft on completion of the Services. Each invoice shall include such supporting information required by Metalcraft to verify the accuracy of the invoice, including the relevant purchase order number.

- 6.3 In consideration of the supply of the Services by the Supplier, Metalcraft shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 6.4 All amounts payable by Metalcraft under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Metalcraft shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5 If Metalcraft fails to make a payment due to the Supplier under the Contract by the due date, then Metalcraft shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 21 days after the dispute is resolved until payment.
- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow Metalcraft to inspect such records at all reasonable times on request.
- 6.7 Metalcraft may at any time, without notice to the Supplier, set off any liability of the Supplier to Metalcraft against any liability of Metalcraft to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Metalcraft may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Metalcraft of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Metalcraft Materials) shall be owned by the Supplier.
- 7.2 The Supplier grants to Metalcraft, or shall procure the direct grant to Metalcraft of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Metalcraft Materials) for the purpose of receiving and using the Services and the Deliverables.
- 7.3 Metalcraft grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by

Metalcraft to the Supplier for the term of the Contract for the purpose of providing the Services to Metalcraft.

7.4 All Metalcraft Materials are the exclusive property of Metalcraft.

8. Indemnity

8.1 The Supplier shall indemnify Metalcraft 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 Metalcraft arising out of or in connection with:

- (a) any claim brought against Metalcraft for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding Metalcraft Materials); and
- (b) any claim made against Metalcraft by a third party arising out of, or in connection with, the supply of the Services.

8.2 This clause 8 shall survive termination of the Contract.

9. Data protection

The parties shall comply with their respective obligations under Data Protection Legislation.

10. Insurance

During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance (minimum level of cover: £5 million) and public liability insurance (minimum level of cover: £5 million) to cover the liabilities that may arise under or in connection with the Contract and shall, on Metalcraft's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Termination

11.1 Without limiting or affecting any other right or remedy available to it, Metalcraft may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in Metalcraft's opinion the Supplier's capability to

adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(iii) the Supplier commits a breach of clause (h),

(b) for convenience by giving the Supplier one month's written notice.

11.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

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

(d) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

12. Consequences of termination

12.1 On termination of the Contract for any reason or expiry, the Supplier shall immediately deliver to Metalcraft all Deliverables whether or not then complete, and return all Metalcraft Materials. If the Supplier fails to do so, then Metalcraft may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. Force majeure

13.1 Provided it has complied with clause 13.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

13.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 1 week's written notice to the Affected Party.

14. General

14.1 **Assignment and other dealings.**

- (a) Metalcraft may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Metalcraft.

14.2 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs,

customers, clients or suppliers of the other party, except as permitted by clause 14.2(b).

- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.3 **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.

14.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

14.5 **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 right or remedy. 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.

14.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under this clause 14.6, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.

14.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number or sent by email to the email address specified in the Order.
- (b) Any notice or other communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by fax or by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

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