

Astley Procurement Terms and Conditions (Short Form) – Provision of Goods.

1. Payment

1.1 The Supplier shall comply with and/or aid Astley in complying with the requirements of any electronic e-procurement system being used generally or on a designated project relating to the Provision of Goods and as amended from time to time.

1.2 In consideration of the Supplier providing the Goods, Astley shall pay all valid invoices for charges as detailed in the Purchase Order or specific Works Instruction within 65 days of the later of the date of the invoice or the date upon which Astley received the invoice. Such invoice only being issued by the Supplier following both the confirmed receipt and acceptance by Astley of the Goods from the Supplier, such confirmation being, either a signed Delivery Note completed by the relevant authorised representative of Astley or any other specific 'Sign - Off' procedure applicable and required by Astley at that time, including providing Astley with a written or electronic record of the same.

1.3 All prices, rates and charges referred to in this Agreement are exclusive of value added tax ("VAT") but inclusive of packaging, insurance, carriage and all other charges, taxes and duties. The Supplier shall identify any part of any invoice that is zero-rated for or exempt from VAT with a full explanation.

1.4 Astley shall have the right to set off any payment due to the Supplier or which at any time may become due under a valid invoice against any sums owed to Astley by the Supplier under this Agreement or otherwise.

1.5 If any sum due and payable under this Agreement is not paid by Astley in accordance with the agreed payment terms, the Supplier shall be entitled (without prejudice to any of its other rights) following receipt by Astley of written notice from the Supplier, to charge interest at the rate of 1 per cent above the base rate of the Bank of England from time to time in force from the date of such notice until the date of actual payment. Interest shall not accrue or be payable where monies are set off or withheld pursuant to Paragraph 1.4. The parties

agree that the right to claim interest under this Paragraph is a substantial remedy for late payment and is in substitution for any statutory or other right to claim interest and/or other remedy for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

2. Intellectual Property Rights and Data Protection

2.1 Unless agreed between the parties, this Agreement does not assign or otherwise transfer any Intellectual Property Rights (which for the purposes of this Agreement is defined as all intellectual property rights whether or not registered or registerable and including all extensions, renewals and applications thereof and including without limitation all copyright, trade marks, trade names, design rights, goodwill, database rights, confidential information, trade secrets or know-how) existing at or prior to the date of this Agreement (the "Pre-Existing IPR"). Neither party may assert ownership of the other party's Pre-Existing IPR.

2.2 The Supplier hereby assigns to Astley with the fullest extent possible and for Astley to hold absolutely, with full title guarantee and free from all third-party rights and encumbrances, all Intellectual Property Rights and all items created through the performance of its obligations under this Agreement.

2.3 Each party hereby grants to the other a non-exclusive, royalty free licence of its Pre-Existing IPR for the duration of this Agreement:

(a) in the case of such licence granted to the Supplier, to the extent required to provide the Goods and otherwise comply with its obligations under this Agreement; and

(b) in the case of such licence granted to Astley, to enable Astley to receive, use and enjoy the required Goods.

(c) Neither party may assign, licence, grant security over or otherwise transfer the other party's Pre-Existing IPR.

- 2.4 The Supplier shall ensure and undertake to procure that all moral rights in the Goods and any other deliverables are waived irrevocably and unconditionally and are not asserted.
- 2.5 Neither party shall use any trade name, logo or other trademark of the other, without their prior written agreement.
- 2.6 Each party shall indemnify, keep indemnified and hold the other harmless from all claims and all direct, indirect and consequential liabilities, costs, proceedings, damages, losses and expenses (including legal and other professional expenses), awarded against, or incurred or paid by, the other party or its supplier(s), sub-supplier(s) and/or sub-contractor(s) as a result of or in connection with any proven or accepted claim that the Goods themselves or the use or provision of the Goods infringes the Intellectual Property Rights or any other rights of a third party or is otherwise unlawful.
- 2.7 In the event that a party fails to comply with the provisions of Paragraph 2.6 then it shall defend, indemnify, keep indemnified and hold the other harmless on demand against all losses, costs, fines, claims and proceedings arising from such failure to comply.

3. Indemnity

- 3.1 The Supplier shall indemnify, keep indemnified and hold Astley harmless from all claims and all direct, indirect and consequential liabilities, costs, proceedings, damages, losses and expenses (including legal and other professional expenses), awarded against, or incurred or paid by, Astley or its other suppliers or sub-contractors, as a result of or in connection with the following:
- (a) with regards to the rules on remoteness, any breach of any of the Supplier's contractual obligations under this Agreement or any statutory or regulatory breach.
- (b) any claim made for any liability, loss, damage, injury, cost or expense to the extent that any such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from a direct or indirect breach or negligent performance, or any fraud, dishonesty or illegality or failure or delay in

- performance of the Agreement by the Supplier; and
- 3.2 The entire liability of Astley to the Supplier arising out of or in connection with this Agreement for any direct, indirect and consequential liabilities, costs, proceedings damages, losses and expenses (including legal and professional expenses) whether arising from contract, tort, negligence or otherwise, shall be limited in each year of the term of this Agreement to 100% of the sum paid to the Supplier by Astley under this Agreement in that year.
- 3.3 Nothing in this Agreement excludes or limits the Supplier's or Astley's liability in respect of:
- (a) death or personal injury caused by its negligence (including negligence of its employees, agents, supplier(s), sub-suppliers and/or sub-contractors); or
- (b) fraud or fraudulent misrepresentation.

4. Insurance

- 4.1 The Supplier shall obtain and maintain at all times:
- (a) all insurance necessary to insure any necessary and relevant Goods against all risks (including, but not limited to, the risks of carriage and product liability and risks related to consumer protection legislation or other laws which impose liability as a result of the manufacture, sale or distribution of products) until such time as risk in the Goods passes to Astley in accordance with Paragraph 7.1;
- (b) all insurance necessary to insure all other risks which may arise in connection with this Agreement;
- (c) Employers Liability and Public liability insurance; and
- (d) all other insurance required by law.
- Such insurance cover shall be of an amount adequate to cover everything a reasonably prudent supplier would insure when providing Goods similar to those of the Supplier in order to cover its obligations under this Agreement but shall in no event be less than any Statutory or other designated market minimum.
- 4.2 The Supplier shall take all reasonable steps to ensure that (if generally commercially available) the general interest of the Supplier's customers (including Astley) is

noted on each insurance policy and, if requested by Astley, the Supplier shall provide Astley with documentary evidence of the existence of such insurance policies and of the payment of the relevant premiums.

5. Warranty

5.1 The Supplier shall warrant, represent and undertake that at all times:

- (a) its obligations under this Agreement shall be performed with all reasonable diligence, skill and care, and in accordance with the Goods specification previously agreed and set out in the Purchase Order or specific Works instruction and otherwise in accordance with the relevant best industry practice and this Agreement (in the event that there is any conflict between these standards, the higher standard shall prevail).
- (b) all Goods shall be free from all encumbrances and shall be of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and fit for any purpose held out by the Supplier or made known to the Supplier by Astley or of which the Supplier was or should have reasonably been aware.
- (c) all Goods shall be free from defects in design, material and workmanship and should be both warranted and guaranteed by the Supplier for the specific period stated within the relevant accepted Tender, Purchase Order, specific Works Instruction or as otherwise specifically agreed.
- (d) it shall comply with all applicable statutory and regulatory requirements including any applicable codes of practice having the force of law or otherwise.
- (e) it shall ensure that all of its staff perform this Agreement without causing any damage to Astley's business, public image, reputation and goodwill; and
- (f) the Goods required, and Astley's use of such Goods shall not infringe the Intellectual Property Rights or other rights of any third party or contain any material which is defamatory, libellous, which breaches any rights of privacy, or which is otherwise unlawful or illegal.

6. Delivery and Acceptance

6.1 Subject to and without limitation or prejudice to Paragraph 7.2, Astley shall not be deemed

to have accepted any Goods until Astley has confirmed both its receipt and acceptance of such Goods from the Supplier. Such confirmation being either a signed Delivery Note completed by the relevant authorised representative of Astley or any other specific 'Sign –off' Procedure applicable and required by Astley at that time, including providing Astley with a written or electronic record of the same.

6.2 If any Goods delivered to Astley do not comply with Paragraph 5.1, or any other terms of this Agreement, then, without limiting any other right or remedy that Astley may have, Astley may reject those Goods and:

- (a) require the Supplier to remove and replace the rejected Goods at the Supplier's risk and expense within five (5) business days of being requested to do so or within such shorter time as Astley may specify; or
- (b) require the Supplier to compensate Astley in an amount equal to the price paid or payable regarding the rejected Goods; and
- (c) claim consequential and any other damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods which are not in conformity with the terms of this Agreement.

6.3 The Supplier shall deliver the Goods in accordance with the terms of this Agreement and to the address set out in the Purchase Order or specific Works instruction, unless otherwise advised in writing by an authorised representative of Astley. Time shall be of the essence for delivery of all Goods and for the performance by the Supplier of its other obligations under this Agreement. If the Goods are not delivered in accordance with the details set out in the Purchase Order or specific Works Instruction then, without limiting any other right or remedy Astley may have under this Agreement in law or in equity, Astley may at their option:

- (a) in relation to the required Goods, refuse to take any subsequent attempted delivery of such Goods; and
- (b) obtain substitute goods as applicable from another supplier and recover from the Supplier any costs and expenses reasonably

incurred by Astley in obtaining such substitute goods.

6.4 The rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by this Agreement, law, equity or otherwise. Except as expressly stated in this Agreement (or in law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.

7. Title and risk

7.1 The risk in the Goods provided to Astley shall pass to Astley upon the confirmed delivery of the Goods by the Supplier to Astley as set out within Paragraph 6.1.

7.2 Title (with full title guarantee, free from all or any encumbrances and third-party rights) to the required Goods shall pass to Astley on the later of either; i) the effective date of this Agreement or ii) the date upon which the Goods are delivered to the designated location.

8. Assignment

8.1 The Supplier may not sub-contract, assign or otherwise transfer the whole or any part of the Agreement without the prior written consent of Astley, but notwithstanding this, if such consent is given, the Supplier shall not be relieved of any of its obligations under the Agreement.

8.2 Astley may sub-contract, assign or otherwise transfer the whole or any part of this Agreement with the prior written consent of the Supplier, such written consent not to be unreasonably withheld.

9. Force Majeure

9.1 Neither the Supplier nor Astley shall be liable for any expense, loss or damage resulting from delay or prevention of performance of the Agreement that is caused by fires, floods, acts of God, riots, thefts, accidents or any other cause whatsoever (but excluding for the avoidance of doubt any strikes, lock-outs or industrial action, by the employees or agents of the Supplier), provided that such failure or delay was beyond the control of the

affected party (a “**Force Majeure Event**”). For the purposes of clarity and certainty, any event which is declared as being either an epidemic or pandemic by the government of the United Kingdom and results in the delay to or the prevention of the performance of this Agreement, will be deemed to be a Force Majeure Event.

9.2 If the Force Majeure Event prevails for a continuous period in excess of 28 days, or periods which, when aggregated, are in excess of 28 days, after the date upon which the Force Majeure Event began, Astley shall be entitled to terminate this Agreement immediately upon notice to the Supplier.

10. Termination and consequences of termination

10.1 If the Supplier commits a breach of its obligations under this Agreement which is not capable of remedy, or where capable of remedy does not remedy such breach within 14 days of written notice given to it by Astley specifying such breach and requiring its remedy, then Astley may terminate this Agreement by giving 7 days notice in writing to the Supplier.

10.2 Either party may terminate this Agreement immediately by notice in writing to the other if any of the following conditions are met:

- (a) the other party proposes or enters any composition or other arrangement for the benefit of its creditors or a class of creditors.
- (b) anyone takes any step towards winding up or dissolving the other party.
- (c) anyone takes any step towards the other party obtaining a moratorium or other protection from its creditors.
- (d) anyone takes any other step towards appointing a trustee, supervisor, receiver, liquidator, administrator or similar officer or other encumbrancer of the other party or any of its assets.
- (e) an event occurs which would result in a floating charge crystallising over any of the other party's assets.
- (f) any person takes any step to take possession of or levy a distress or execution against any of the other party's assets.
- (g) the other party stops carrying on business.

- (h) any event analogous to any of the above happens in any jurisdiction.
- (i) the other party is unable to pay its debts or admits it is unable to do so (within the meaning of section 123(1)(a), (b) or (e) of the Insolvency Act 1986 as amended (without any need for the relevant party to prove it in court)); or
- (j) the value of the other party's assets are at any time less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

10.3 Astley may terminate this Agreement immediately by notice in writing to the Supplier if the Supplier suffers a change of control as that term is defined in sections 450 and 451 of the Corporation Tax Act 2010.

10.4 These provisions are without prejudice to any other rights and remedies of Astley under this Agreement or at law.

10.5 Immediately on termination or other expiry of this Agreement the Supplier shall return to Astley all equipment, materials and property supplied to it in connection with this Agreement and the licence granted by Astley under Paragraph 2.3 shall cease and the Supplier shall have no further right to use Astley's Intellectual Property Rights. Furthermore, upon such termination or other expiry of this Agreement any stock and/or specialised or bespoke tooling and other associated equipment, which under agreement with the Supplier and having been paid for by Astley is held on the premises of or by the Supplier, shall be returned to Astley. All costs of delivery to the designated location determined by Astley shall be borne by the Supplier.

11. Employees

11.1 In the event that at any time during or following the Agreement, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended or replaced, (the "**Transfer Regulations**") apply or are alleged to apply in relation to the Agreement, the Supplier will (without limitation) indemnify and keep indemnified on an ongoing basis Astley and any other supplier that takes over the provision of the same or similar services (a "**Successor**"), whether following

termination of this agreement or otherwise, against any and all Employment Liabilities that Astley or the Successor may incur as a result of or in connection with the transfer or alleged transfer of the employment or engagement of any employee or worker under the Transfer Regulations (or otherwise) to Astley and/or any Successor, howsoever or whenever such Employment Liabilities arise. For the avoidance of doubt this includes, without limitation: (a) all Employment Liabilities relating to the dismissal or alleged dismissal of any employee or worker of the Supplier, sub-supplier or any subcontractor (whether such dismissal is effected by Astley, the Supplier, the sub-supplier or any subcontractor, any Successor or otherwise) or any other employment related liability which Astley or any Successor could inherit under the Transfer Regulations; and (b) any liability (howsoever arising) for the failure or alleged failure of any person (including without limitation Astley, the Supplier, sub-supplier or any subcontractor and any Successor) to comply with the Transfer Regulations.

11.2 Further, the Supplier shall (and shall procure that any sub-supplier or subcontractor shall) promptly comply with any lawful instruction issued by Astley at any time during or following the Agreement in relation to any of its or their employees or workers who provide the required Goods (including, without limitation, the provision of such accurate written information as Astley require in respect of such employees or workers).

11.3 For the purposes of Paragraph 11.1 above Employment Liabilities means any costs, claims, demands, fines, or expenses (including legal and other professional expenses), payments, wages, actions, proceedings, compensation, awards, interest, loss, damages or penalties howsoever, arising including any liabilities for income tax to be collected through the Pay As You Earn Scheme and any primary and secondary National Insurance contributions.

12. Waiver

12.1 Any failure or delay by Astley in exercising any right, power or remedy that it might have

under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by Astley of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

12.2 Any waiver of a breach of, or default under, any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

13. Determination of Disputes

13.1 The parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.

13.2 Subject to either Party's rights under and in accordance with this Agreement or at Law, prior to initiating any proceedings in the English Courts, the parties agree to follow the following procedure to settle all disputes arising under or out of this Agreement.

13.3 Following the receipt of written notice given by either Party to the other concerning the existence of a dispute or potential dispute arising out of or under this Agreement, the operational authorised representatives of each Party shall meet within 7 days of the receipt of the initial written notice in order to discuss and resolve the dispute or potential dispute. If no such resolution is reached at or immediately following this first meeting, then the duly authorised representatives at Director or equivalent level of each Party shall meet within the 7 days following the date of the first meeting in order to discuss and resolve the said dispute or potential dispute. If no resolution is reached at or immediately following this second meeting, a third and final meeting shall be held, within 14 days following the date of the second meeting, between duly agreed and authorised representatives of each Party. If the dispute or potential dispute remains unresolved following this third meeting and following a period of 45 days after the date of the receipt of the initial written notice concerning the existence of a dispute or potential dispute,

then either Party will be free to pursue whatever remedies are available to them at Law.

13.4 All rights of the Parties in respect of any dispute or potential dispute will be and shall remain fully reserved and the entire procedure involving authorised representatives of the Parties as set out in Paragraph 13.3 above will be strictly confidential and will be conducted 'without prejudice' to any subsequent proceedings.

13.5 If a dispute or potential dispute is resolved in accordance with Paragraph 13.3 Astley and the Supplier will create a written record of the resolution agreement reached which will then be duly signed by their designated and authorised representatives. Following this, both Parties will immediately execute such further documentation and carry out such further actions necessary and required to give effect to the resolution agreement.

13.6 Neither party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this Paragraph 13, such provisions not applying in respect of any circumstance where such remedies are sought.

14. Entire Agreement

14.1 This Agreement sets out the entire agreement and understanding between the parties relating to its subject matter.

14.2 Each party acknowledges that in entering into this Agreement it has not relied on any statement, representation, warranty, promise or assurance, which is not expressly set out in this Agreement.

14.3 Nothing in this Paragraph 14 shall limit or exclude any liability for fraud.

15. Rights of Third Parties

15.1 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of this Agreement.

16. No Variation

16.1 No variation to this Agreement shall be valid unless it is in writing and signed for and on behalf of each of the parties.

17. Survival

17.1 Termination or expiry of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

17.2 Without prejudice to the generality of Paragraph 17.1 where a Paragraph in this Agreement (including without limitation Paragraphs 2, 3, 4, 5, 7, 13.2, 13.3, 13.4, 13.5, 13.6 and 14) expressly or impliedly has effect on termination or other expiry of this Agreement, that Paragraph shall continue in force on and after such termination or expiry.

18. Law and Jurisdiction

18.1 The Parties agree and confirm that the Construction and Performance of this Agreement is governed by English law.

18.2 The Parties agree and confirm that the Construction and Performance of this Agreement shall be subject to the exclusive jurisdiction of the English Courts.