

**TERMS AND CONDITIONS
SUPPLY OF GOODS AND SERVICES**

**Note for Supplier: please note the Remedies and Indemnity in Condition 7
and Liability in Condition 8**

1. INTERPRETATION

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Contract” - any contract formed in accordance with Condition 2 between MML and the Supplier for the sale and purchase of Goods and/or supply of Services.

“Deliverables” - Goods and/or Services according to the context.

“EIR” - means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“FOIA” - means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Goods” - any goods which the Supplier is to supply to MML (including any of them or any part of them) under a Contract.

“MML” – Midland Metro Limited.

“Order” - any purchase order of MML for Deliverables incorporating these Terms and Conditions and any applicable written specification supplied or advised by MML to the Supplier with or before the purchase order.

“Services” - any services which the Supplier is to carry out for MML (including any part of them) under a Contract.

“Standards” - any applicable British, European Union or international standard, specification or code of practice issued by any applicable standards institution current at the date of the Order.

“Supplier” - the person(s), firm or company from whom MML orders the Goods and/or Services.

“Terms and Conditions” - the standard terms and conditions of purchase set out in this document together with any special terms as specified on the front of the Order or otherwise agreed in writing between the Supplier and MML.

2. FORMATION

2.1 The Contract will commence on the date specified in the order and will continue for the term specified in the Order or until terminated in accordance with its terms.

2.2 Subject to any variation under Condition 13.13, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Supplier purports to apply under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract. Nothing in this Condition 2.2 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

2.3 Each quotation for Deliverables from the Supplier will be deemed to be an offer by the Supplier to sell and/or supply the Deliverables upon these Terms and Conditions. All quotations provided by the Supplier, including the price provision, will remain open for 90 days from its date. The Contract is only formed when

MML issues the relevant Order following receipt of the quotation. No contract will exist prior to the issuing of such Order.

2.4 The Supplier may not cancel any Contract. MML is entitled to cancel the Contract in whole or in part by giving written notice to the Supplier (i) in the case of Goods, at any time prior to delivery of the Goods; or (ii) in the case of Services, at any time whether before or during performance of the Services, and in either case MML's sole liability will be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation, but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

3. SPECIFICATION

3.1 The quantity, quality and description of the Deliverables, and any applicable service levels and/or service credits, will be as specified in the Order. Precise conformity of the Deliverables with the Order, the Standards and the Contract is of the essence and MML will be entitled to reject the Goods or terminate the Contract under Condition 9.1 if the Deliverables are not in conformance. Any breach of this condition is deemed a material breach which is not capable of remedy under Condition 9.1.

3.2 The parties may at any time by written agreement make changes in writing relating to the Order. If such changes result in an increase or reduction in cost of, or time required for, the performance of the Contract, such changes will be subject to the agreement of an equitable adjustment to the price, delivery schedule or both.

4. PRICE AND PAYMENT

4.1 The price payable for the Deliverables will be that stated in the Order and, unless otherwise stated in that Order, will be (i) inclusive of costs of packaging and carriage, all costs and expenses of the Supplier, and all sales or other taxes and duties other than VAT; and (ii) exclusive of VAT which will be added to the sum in question at the rate and in the manner prescribed by law. Subject to Condition 3.2 the price will be fixed for the duration of the Contract.

4.2 The Supplier may invoice MML in accordance with the payment dates referred to in the Order or as otherwise agreed, or if no specific dates have been referred to or agreed, for the Goods on or at any time after delivery, or for the Services on or at any time after performance, quoting the number of the Order in each invoice, and subject to proper performance by the Supplier of its obligations under the Contract MML will pay each such invoice within 30 days of receipt.

4.3 If any undisputed sum payable under a Contract is not paid when due then the party entitled to payment may claim interest from the due date until payment is made in full both before and after any judgment, at 2 per cent per annum over HSBC Bank plc base rate from time to time. The parties agree that this Condition 4.3 is a substantial remedy for late payment of any sum payable under any Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

5. INSTALMENTS

The Supplier may not deliver the Goods by separate instalments or perform the Services in stages unless specifically agreed in writing by MML. If MML does agree, the Contract will be construed as a separate contract in respect of each such instalment or stage.

6. DELIVERY

6.1 The Goods will be delivered to, and the Services will be performed at, the address stated in the Order during MML's normal office hours on the date or within the period specified in the Order, or if no such period is specified then within 14 days of the Order.

6.2 MML will not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. MML will also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

6.3 Risk in and ownership of the Goods will pass to MML on delivery.

7. **REMEDIES AND INDEMNITY**

7.1 Without prejudice to MML's other rights or remedies, the following are material breaches of the terms of the Contract which are not capable of remedy:

7.1.1 failure to deliver the Goods or perform the Services on the due date in accordance with Condition 6.1; and/or

7.1.2 the supply of Goods or Services not in accordance with the Contract, including without limitation the supply of any Goods of unsatisfactory quality or the performance of Services without reasonable skill and care.

7.2 In a case falling within Condition 7.1.1, MML may at its option (i) terminate the Contract, either wholly or to the extent of the relevant default, and/or purchase other goods or services of the same or similar description (ii) make good the default or (ii) in the event of the Contract being wholly determined, to obtain the goods or services remaining to be delivered from such other party it reasonably determines. The amount by which the cost of purchasing such other goods or services exceeds the amount originally payable to the Supplier for the specified Goods or Services shall be recoverable from the Supplier.

7.3 Without prejudice to Conditions 7.1 and 7.2 or to any other right or remedy which MML may have, if any Deliverables are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, MML will be entitled (but not obliged) to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Deliverables have been accepted by MML:

7.3.1 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis of a full refund for the Goods so returned being paid forthwith by the Supplier;

7.3.2 at MML's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or Services or to supply replacement goods or services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

7.3.3 to refuse to accept any further deliveries of the Goods or any further performance of Services but without any liability to MML;

7.3.4 to carry out at the Supplier's expense any works necessary to make the Goods comply with the Contract, and/or to perform, or to contract with a third party to perform replacement or corrective services; and

7.3.5 to claim such damages (whether resulting from direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profit)) as may have been sustained in consequence of the Supplier's breach of the Contract.

7.4 The Supplier will indemnify, keep indemnified and hold harmless MML from and against all costs (including the cost of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which MML incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Supplier of the terms of a Contract.

7.5 Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of a Contract if it is due to any event beyond the reasonable control of a party to the Contract including, without limitation, acts of God, war, protests, fire, flood, storm, tempest, epidemic, explosion, terrorism, national emergencies, or industrial disputes other than those affecting the workforce of a party to the Contract ("Force Majeure"), and the party so delayed will be entitled to a reasonable extension of time for performing such obligations. If MML requires the relevant Deliverables urgently and if, in its reasonable opinion, Force Majeure affecting the Supplier would cause unacceptable delay, MML may give written notice to the Supplier to terminate the Contract. In addition, if the Force Majeure in question continues for more than 30 days either party may give written notice to the other to

terminate the Contract. In either case the notice to terminate must specify the termination date, and once such notice has been validly given, the Contract will terminate on that termination date.

8. **LIABILITY**

8.1 Subject to Condition 8.3 each party's aggregate liability under each Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss of or damage to tangible property (which for the avoidance of doubt includes data) (whether belonging to the other party or a third party) howsoever caused will be limited to £5,000,000 (five million pounds).

8.2 Subject to Condition 8.3, and other than any liability of the Supplier arising under any of Conditions 7.1, 7.2, 7.4, 9.5, 10.2 and 11, which shall not be limited, each party's aggregate liability under a Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss or damage other than that referred to in Condition 8.1 howsoever caused will be limited to whichever is the higher of (i) the amount set out in the Order, if any, and (ii) an amount equal to 125% of the price payable by MML for the Deliverables under the relevant Contract.

8.3 Neither party excludes its liability (if any) to the other party:
8.3.1 for breach of its obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Acts 1982;
8.3.2 for personal injury or death resulting from its negligence;
8.3.3 for any matter which it would be illegal for it to exclude or to attempt to exclude its liability; or
8.3.4 for fraud.

9. **TERMINATION**

9.1 Either party may by written notice terminate the Contract immediately if the other party is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect.

9.2 MML may at any time by notice in writing terminate the Contract as from the date of service of such notice if there is a change of control, within the meaning of Section 1124 of the Corporation Tax Act 2010, in the Supplier. The Supplier shall notify MML within two (2) months of any change of control taking place.

9.3 The Supplier warrants that neither it nor any of its officers or employees has or will have any interest in any matter where there is or is reasonably likely to be a conflict of interest with MML arising in connection with entering into or performing the Contract or where any such conflict will or is reasonably likely to arise for any employee of MML, save to the extent fully disclosed to and approved by MML. The Supplier shall check for any conflict of interest at regular intervals throughout the term of the Contract and in any event not less than once in every six months and shall notify MML in writing immediately upon becoming aware of any actual or potential conflict of interest and shall work with MML to do whatever is necessary (including the separation of staff working on, and data relating to, the Contract from the matter in question) to manage such conflict to MML's satisfaction, provided that, where MML is not so satisfied, it may terminate the Contract forthwith on written notice to the Supplier.

9.4 The termination of the Contract, howsoever arising, is without prejudice to the rights, duties and liability of either the Supplier or MML accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

9.5 MML may at its option terminate a Contract in the event the Supplier is in breach of Conditions 11.1 and/or 11.2 and seek, pursue or otherwise recover from the Supplier any loss resulting from such termination.

10. **PROPERTY**

10.1 All materials, equipment, tools, and other materials supplied by MML to the Supplier will at all times be and remain the exclusive property of MML.

- 10.2 MML authorises the Supplier to use its intellectual property solely for the purpose of exercising its rights and performing its obligations under the Contract. The Supplier will have no other rights whatsoever in respect of MML's intellectual property rights.
11. **ANTI – BRIBERY**
- 11.1 The Supplier undertakes to:
- 11.1.1 comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption including, but not limited to the Bribery Act 2010;
- 11.1.2 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 United Kingdom;
- 11.1.3 comply with MML anti-corruption policies disclosed to the Supplier from time to time;
- 11.1.4 ensure that any of its representatives associated with the supply of the Goods and/or Services comply with this Condition 11; and
- 11.1.5 immediately notify MML if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.
- 11.2 For the purposes of Condition 11.1.5, the meaning of 'foreign public official' and whether a person is 'associated' with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
12. **DATA PROTECTION**
- 12.1 MML is a data controller as defined in the Data Protection Act 2018 ("the Act") in respect of the personal data (as defined in the Act) of third parties. If in the course of performing Services the Supplier acts as data processor (as defined in the Act) in respect of such data, the Supplier will perform its obligations under each Contract in accordance with (and so as to enable MML to comply with MML's obligations under) the Act.
- 12.2 If personal data is to be processed the Supplier shall confirm in writing to MML the subject matter, duration, nature and purpose of any processing, the type of personal data and categories of data subjects in relation to the processing prior to commencement of any Services.
- 12.3 Where acting as a data processor, the Supplier shall:
- 12.3.1 process personal data for the purposes of performing its obligations, strictly in accordance with the Contract and MML written instructions (unless required by law to act without such instructions);
- 12.3.2 keep all processed personal data confidential and ensure that any authorised sub-processors have undertaken to keep the processed personal data confidential or are under an appropriate statutory obligation of confidentiality;
- 12.3.3 take appropriate measures to ensure the security of processing;
- 12.3.4 only engage a sub-processor with the prior consent of MML and a written contract;
- 12.3.5 assist MML in providing subject access and allowing data subjects to exercise their rights under the Act;
- 12.3.6 assist MML in meeting its obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- 12.3.7 notify any personal data breaches to MML immediately to allow the parties to comply with the terms of the Contract and the Act (as applicable);
- 12.3.8 delete or return all personal data to MML as requested at the end of the contract; and
- 12.3.9 submit to audits and inspections, and provide MML with whatever information is required to ensure compliance with obligations under the Act
13. **GENERAL**
- 13.1 Each party shall keep confidential any confidential information disclosed to it by the other. Confidential information includes, without limitation, information which is marked or expressed as being confidential, the contents of these Terms and Conditions and of any Contract, and any information which could reasonably be deemed to be confidential, from its nature, content or the circumstances in which it is provided. Neither party shall disclose confidential information to anyone else except to its employees, agents and sub-contractors who need the information to effect proper performance of the Contract and/or to its professional advisers who are subject to a duty of confidentiality. Each party shall be responsible for ensuring that any person to whom information is disclosed by them complies with the terms of this Condition 13.1. These obligations of confidentiality shall survive termination of the Contract.
- 13.2 When any representative of the Supplier (whether an employee, sub-contractor, agent or otherwise) attends at any premises of MML in connection with the provision of the Services such representative will obey at all times the lawful orders of any authorised representatives of MML, and the requirements of (i) MML's applicable rules and policies to the extent that the same have been made known in advance to the Supplier; and (ii) all other applicable rules and regulations. Any access to any of MML's premises made available to the Supplier in connection with the proper performance of a Contract shall be used by the Supplier solely for the purpose of performing the Services during the term of the Contract. The Supplier shall have the use of and access to such premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises.
- 13.3 The Supplier shall adhere to, co-operate with MML in respect of, and where relevant provide the deliverables in accordance with, all of MML's policies which are applicable to the provision of the Deliverables and are made known to the Supplier, including without limitation policies in respect of data protection, freedom of information, health and safety, ICT and non-discrimination.
- 13.4 MML may audit the Supplier's performance of any Contract at any time, including after performance of the Supplier's obligations, but shall not do so more than once in each calendar year unless (i) required to conduct any additional audit for legal or regulatory reasons or (ii) MML reasonably considers that one or more additional audits are necessary in any given year. The Supplier shall co-operate with MML and its appointed auditors. MML shall pay the fees of any third party auditor unless the audit reveals a discrepancy of 5% or more in MML's favour, in which case the Supplier shall reimburse MML in respect of such fees.
- 13.5 The Supplier shall, and shall procure that its authorised sub-contractors shall, maintain a complete and correct set of records pertaining to all activities relating to the performance of each Contract and the Supplier's obligations under the Contract and all transactions entered into by the Supplier for the purposes of the Contract ("Records"), and retain all Records during the term of the Contract and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of the Contract.
- 13.6 The Supplier shall throughout the term of each Contract maintain insurance for the purposes and at the minimum levels referred to in the applicable Order, or, if none are referred to in the Order, (i) public liability cover with a minimum limit of indemnity of £5,000,000 (five million pounds) and (ii) professional indemnity cover with a minimum limit of indemnity of £2,000,000 (two million pounds).

- 13.7 Each right or remedy of MML under any Contract is without prejudice to any other right or remedy of MML under this or any other Contract.
- 13.8 MML will be entitled but not obliged at any time or times to set off any liability of the Supplier to MML against any liability of MML to the Supplier (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated). MML's rights under this Condition 13.8 will be without prejudice to any other rights or remedies available to MML under this Agreement or otherwise.
- 13.9 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from that Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 13.10 No failure or delay by MML to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 13.11 MML may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 13.12 The Contract is personal to the Supplier who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without MML's prior written consent which may be withheld or given under such conditions as MML thinks fit, and provided (i) that the Supplier shall remain responsible for all services performed by any sub-contractor and (ii) that such services shall be performed under the same conditions as if executed by the Supplier.
- 13.13 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by the parties.
- 13.14 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.15 Nothing contained in these Terms and Conditions, and no action taken by the parties pursuant to these Terms and Conditions, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.
- 13.16 The parties do not envisage that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') will apply to any Contract. However, the Supplier will:-
- 13.16.1 provide to MML any information which MML may require from time to time; and
- 13.16.2 keep MML indemnified in full against any costs, claims, awards, orders, obligations and liabilities whatsoever (including legal and other professional fees and expenses) whenever arising which MML may incur in connection with the employment and/or termination of employment of any persons arising out of the application of TUPE in connection with any Contract.
- 13.17 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service, or if by pre-paid first-class post or special delivery post, 48 hours after being posted.
- 13.18 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.

14. FREEDOM OF INFORMATION

- 14.1 The Supplier acknowledges that MML is subject to FOIA, EIR and code of practice on government information and shall assist and co-operate with MML to enable MML to comply with its information (as defined in FOIA) disclosure requirements.

15. EQUALITIES

- 15.1 The Supplier warrants that it shall not (and shall ensure that its subcontractor, agents and employees shall not) discriminate whether directly or indirectly against any person or group of persons on any grounds, including but not limited to race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, age, pregnancy, maternity, marital status or civil partnership. Without prejudice to the generality of the foregoing, the Supplier shall not (and shall ensure that its subcontractors, agents and employees shall not) discriminate against any person or group of persons within the meaning of the Equality Act 2010, and the Human Rights Act 1998 and/or any other relevant or equivalent legislation from time to time in force.