



## RSPB and RSPB Sales Ltd

# Terms & Conditions of Purchase of Goods or Services

### INTERPRETATION

In these conditions the following words shall have the following meanings

Agreement	- means the contract formed as a result of the Supplier's unconditional acceptance of the Order for the sale and purchase of the Goods and/or the supply and acquisition of the Services and includes any special terms & conditions agreed in writing between the Company and the Supplier, any terms set out in the Order and these Conditions;
Charges	- means the charges for the Goods and Services as stated in an Order;
Company	- means the RSPB or RSPB Sales Limited of The Lodge, Sandy, Bedfordshire SG19 2DL (the RSPB) or any of its Subsidiaries or Holding Companies as stated on the Order;
Conditions	- means the standard terms & conditions of purchase set out in this document and (unless the context otherwise requires) includes any special conditions agreed in writing between the Company and the Supplier;
Data Protection Law	- means all applicable legislation protecting the fundamental rights and freedoms of individuals in relation to their personal data and right to privacy (including, but not limited to, the GDPR and the Data Protection Act 2018) as amended and updated from time to time;
GDPR	- means the General Data Protection Regulation (2016/679) and 'Articles' refers to the articles of the GDPR. The terms "personal data", "data subject", "processor", "controller", "processing", "personal data breach", "pseudonymisation", "special categories of data" and "supervisory authority" have the meanings set out in Article 4 of the GDPR;
Goods	- means the goods if any (including any of them or part of them and including their packaging) described in the Order;
Holding Company	- has the meaning given in s.1159 and Schedule 6 of the Companies Act 2006;
Intellectual Property Rights	- means (i) patents, designs, trade-marks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how and confidential information; (ii) all other rights of a similar nature or having an equivalent effect which currently exist anywhere in the world, or are recognised in the future; and (iii) applications, extensions and renewals in relation to any of these rights;
Order	- means the Company's authorised purchase order form, which includes a description of the Goods or Services (as applicable), the Charges and any terms applying to the supply of Goods or Services which are additional to these Conditions;
Personnel	- means any director, officer, employee, agent or supplier of the Supplier and includes the employees of any subcontractor or supplier of Supplier, in each case, involved in the provision of the Services;
Regulations	- means all UK legislation, regulations, codes of practice, guidance or other requirements of any relevant government, governmental or regulatory agency, or other relevant body applicable to the Goods and/or the supply or provision of the Goods and/or Services;
RSPB	- means the Royal Society for the Protection of Birds;
RSPB Sales Ltd	- means the wholly owned trading subsidiary of the RSPB;
Services	- means the services (if any) described in the Order;
Service Levels	- means the service levels describing the standards to which the Services are to be performed set out, or otherwise referred to, in the Order (if any);
Specification	- means any specification, standards, data, plans, drawings, models or other information relating to the Goods or Services;
Subsidiary	- has the meaning given to it in s.1159 and Schedule 6 of the Companies Act 2006;
Supplier	- means the person, firm or company who accepts the Company's Order;
Writing	- includes facsimile transmissions, electronic communication and comparable means of communication.

## 1 FORMATION AND INCORPORATION

- 1.1 Any Order placed by the Company for the purchase of Goods or provision of Services is subject to these Conditions. No other terms and/or conditions (including any terms or conditions written on or attached to any quotation, acknowledgment of acceptance of order, specification, sales invoice, delivery note, form, document or correspondence) sought to be imposed by the Supplier will form part of the Agreement. No conduct of the Company shall constitute acceptance of any such other terms and conditions and the Supplier waives any right which it otherwise might have had to rely on such terms and conditions.
- 1.2 Where a Supplier is providing Services only as part of an Order and no actual Goods are included, it is hereby confirmed that the subsequent Conditions, 2.3, 2.6, 2.7, 2.8, 2.9, 4.1, 7.1, 7.6.4, 8.3, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12 and 18.1.1 within these Terms and Conditions, that relate specifically and only to the provision of Goods will be deemed null and void and not form part of this Agreement.
- 1.3 Each Order for Goods or provision of the Services by the Company from the Supplier shall be deemed to be an offer by the Company to purchase the Goods or acquire the Services subject to these Conditions in accordance with Condition 1.5.
- 1.4 Any variation to the Order or these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company and any variation in price, quantity, delivery or other terms or conditions agreed orally shall be confirmed in writing by the Company and the Supplier within 7 days from the date of such agreement, otherwise such variation shall not be binding on either party.
- 1.5 The Supplier shall accept the Order by expressly giving notice in writing of its acceptance. If the Supplier has not notified the Company of its acceptance or rejection of the Order within 14 (overseas orders 21) days of the date thereof, or if the Supplier supplies or commences the supply of the Goods or starts to provide the Services contained in the Order it shall be deemed to have accepted the Order.
- 1.6 In the event of any conflict between a Condition of these Conditions and the terms of an Order, the terms of the Order shall prevail to the extent required to resolve such conflict.

## 2 SUPPLY OF GOODS AND SERVICES

- 2.1 In consideration of the Charges, the Supplier shall provide the Goods and/or Services specified in each Order to the Company in accordance with the provisions of this Agreement.
- 2.2 The Company reserves the right to refuse payment for any Services or Goods not ordered on an Order.
- 2.3 The Supplier shall provide Goods which are without fault and which are of the same quantity, quality and description as specified in the Order and/or in any applicable Specification supplied by the Company to the Supplier.
- 2.4 The Supplier shall provide the Goods and/or the Services:
  - 2.4.1 with that degree of diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a type of undertaking similar to that of the Supplier;
  - 2.4.2 in such a manner as to minimise disruption to the business of the Company; and
  - 2.4.3 as regards the Services only, in accordance with any Service Levels.
- 2.5 The Supplier shall comply with all Regulations in its provision of the Goods and/or Services.
- 2.6 The Company shall have the right to inspect and test the Goods at all times and the Supplier shall not unreasonably refuse any request by the Company to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to delivery and the Supplier shall provide the Company with all facilities reasonably required for inspection and testing.
- 2.7 If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects with this Agreement or any Specifications the Supplier shall take all steps necessary to ensure compliance.
- 2.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods until risk in the Goods has passed to the Company in accordance with Condition 4.1 below and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Agreement.
- 2.9 The Goods shall be packaged and marked in accordance with the Company's instructions and any applicable Regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition.
- 2.10 Any Specifications or equipment supplied by the Company to the Supplier, or produced by the Supplier in compliance with its obligations under this Agreement in the provision of the Services shall be the sole and exclusive property of the Company and accordingly shall be assigned to the Company in accordance with Condition 13.1.
- 2.11 The Company may, during the Agreement period, request that items/services, similar and relevant to this Contract be added to the Agreement.
- 2.12 In light of Condition 2.11, the Supplier shall be afforded the opportunity to quote for such items, however, the Company reserves the right to source the products from an alternative Supplier should the Company deem the prices quoted by the Supplier to be uncompetitive.

### 3 DOCUMENTATION

- 3.1 The Supplier shall quote, as applicable, the Company's Official Purchase Order Number and the Company's Bulk Purchase Order Release Number on all invoices, advice notes, delivery notes, packing notes, bills of lading, certificates of insurance and other documents and shall cross reference these documents to each other.

### 4 RISK AND PROPERTY

- 4.1 Property in the Goods shall pass to the Company upon delivery or where payment is made prior to delivery, once payment is made.  
Risk in the Goods shall pass to the Company when delivery to the premises specified in the Order or to another location specified by the Company in writing is completed (including the unloading of the Goods).
- 4.2 The Company reserves the right to reject any Goods or Services which are defective or which are otherwise not in accordance with the conditions of the Agreement.
- 4.3 Any product of the provision of the Services shall be at the Supplier's risk until the Services are completed in accordance with the Agreement and accepted by the Company, provided that, unless otherwise specified in the Order, risk shall be deemed to have passed to the Company if the Company has not notified the Supplier of its acceptance or otherwise of such products within 1 month of completion of the Services.

### 5 PRICES AND PAYMENT

- 5.1 The Charges payable for the Goods and/or the Services shall be that stated in the Order and unless otherwise stated shall be:
- 5.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, unloading, carriage insurance and delivery of the Goods to the delivery address and any duties, imports, levies or taxes other than value added tax; and
- 5.1.2 fixed for the duration of the Agreement.
- 5.2 No variation in the Charges nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of the Company.
- 5.3 The Supplier shall be required to provide a minimum of 1 month's written notice of any proposed increase in price. Any such proposed increases shall have no effect until accepted by the Company in writing.
- 5.4 The Supplier shall pass onto the Company the benefit of lower prices as a consequence of any decrease in costs.
- 5.5 The Supplier shall be entitled to invoice the Company on or at any time after delivery of the Goods or Services and shall attach a copy of the relevant Order to each invoice which it issues under this Agreement.
- 5.6 The Company shall pay the Charges in the currency stipulated in the Order not later than 30 days after the Supplier delivers a valid VAT invoice or satisfactory completion of the Order whichever is the later, unless different payment terms have been agreed in writing by the Company.
- 5.7 Following receipt of any invoice, if the Company notifies the Supplier of a bona fide dispute concerning the Charges payable under such invoice, then the Company shall pay any undisputed amount but shall be entitled to withhold the amount in dispute pending resolution of that dispute. For the avoidance of doubt, the Supplier's obligations to provide the Goods and/or Services shall in no way be affected by any dispute in relation to the Charges or payment of them.
- 5.8 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any sums payable by the Company to the Supplier under the Agreement however arising and whether any such liability is present or future, liquidated or unliquidated.
- 5.9 If the Company fails to make payment in accordance with this Condition 5 and the relevant Order, the Supplier shall be entitled to charge interest on the overdue amount at a rate of 2% above the base rate of Barclays Bank plc from time to time in force from the date on which such amount fell due until payment.

### 6 CONFIDENTIALITY

- 6.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain. The Supplier shall not use such confidential information for any purpose other than fulfilling its obligations under this Agreement and shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- 6.2 Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

- 6.3 The provisions of confidentiality shall not apply to any information which:
- 6.3.1 is in or enters the public domain otherwise than by breach of this Agreement;
  - 6.3.2 was demonstrably in the possession of the Supplier prior to disclosure by the Company;
  - 6.3.3 is otherwise obtained by the Supplier from a third party who is free to disclose the same; or
  - 6.3.4 is required to be disclosed by law or regulatory authority.
- 6.4 The obligations relating to confidentiality shall continue notwithstanding termination of the Agreement.

## 7 WARRANTIES AND INDEMNITY

- 7.1 The Supplier warrants to the Company that the Goods:
- 7.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and the Sale and Supply of Goods Act 1994, and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time the Order is placed;
  - 7.1.2 will be free from defects in design, material and workmanship;
  - 7.1.3 will correspond in every respect with any specifications, drawings, samples or descriptions provided by the Company; and
  - 7.1.4 will comply with all statutory requirements and regulations and voluntary codes of conduct relating to the Goods and their sale and supply.
- 7.2 The Supplier warrants to the Company that the Services:
- 7.2.1 will be performed by appropriately qualified, trained and experienced personnel, with a high standard of skill, care and diligence;
  - 7.2.2 will be performed to such high standard of quality as it is reasonable for the Company to expect in all the circumstances; and
  - 7.2.3 will comply with all statutory requirements, implied terms, regulations and codes of practice relating to the supply of services generally and the Services in particular.
- 7.3 The Supplier acknowledges that precise conformity of the Goods and/or Services with the Agreement is of the essence of the Agreement and the Company shall be entitled to reject the Goods and/or Services if they are not in conformity with the Agreement, however slight the breach may be.
- 7.4 In the event that the Company does reject the Goods and/or Services under Condition 7.3 above the Supplier shall forthwith at its cost remedy the fault or (at the Company's option) replace the faulty Goods and/or perform the Services afresh at any time within 12 months of first use.
- 7.5 Where a Supplier provides Goods created by a third party, then the warranty provided in 7.1 above will be transferred from the third party to the Company and the Supplier shall not be held liable for any failure to meet the warranty conditions by the third party goods.  
Condition 7 Warranty and Indemnity and Condition 13 Intellectual Property Rights shall only apply to the Goods and/or Services provided directly by the Supplier.
- 7.6 The Supplier shall indemnify and keep indemnified the Company in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by the RSPB or RSPB Sales Limited or any of its Subsidiaries or Holding Companies as a result of or in connection with:
- 7.6.1 any breach by the Supplier of this Agreement;
  - 7.6.2 any act or omission of the Supplier or of any of its employees, agents or contractors;
  - 7.6.3 any personal injury to, or death of, any person caused by, relating to or arising from the Goods and/or Services;
  - 7.6.4 any claim that the Goods infringe, or their use, resale or importation infringes any Intellectual Property Rights of any other third party except to the extent that the claim arises from any specifications, drawings, samples or descriptions provided by the Company;
  - 7.6.5 any liability under the Consumer Protection Act 1987 or any other relevant legislation in respect of the Goods and/or Services; or
  - 7.6.6 any claim made against the Company in respect of any liability, loss, damage, cost or expense sustained by the Company's employees or agents, by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods and/or Services.

7.6.7 The provisions of this Condition 7.6 shall survive termination or expiry of the Agreement, howsoever arising.

7.7 The Supplier shall, at its own expense, adequately insure against its liability arising out of the provisions of this Condition 7.6 and shall upon request produce to the Company written evidence of such cover and that premiums due have been paid.

7.8 Unless otherwise agreed in writing between the Supplier and the Company the Supplier shall maintain for the duration of the Agreement Professional Indemnity insurance with a minimum liability of £2million per claim, Product Liability insurance with a minimum liability of £2million per claim and Public Liability insurance with a minimum liability of £5 million per claim. This Condition 7.8 stipulates a minimum base level of insurance and the Supplier should ensure, as stated in Condition 7.7, that they have adequate insurance to cover the liabilities outlined in Condition 7.6.

## 8 DELIVERY AND ACCEPTANCE

8.1 The Goods shall be delivered to and the Services shall be performed at the Company's place of business or if some other place of delivery is agreed by the Company in writing by delivery of the Goods or provision of the Services at that place during the Company's normal office hours. The Supplier shall off-load the Goods at its own risk as directed by the Company.

8.2 The Goods shall be delivered and/or the Services shall be performed on the date or within the period specified in the Order or if no such period is specified then within 28 days of the Order, unless the Company notifies the Supplier of a change in the required delivery date (giving the Supplier as much notice of the revised delivery date as practicable) in which case the Supplier shall deliver the Goods and/or perform the Services on or by the revised delivery date. Time for delivery of the Goods or performance of the Services shall be of the essence of the Agreement.

8.3 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. For the avoidance of doubt, the Supplier shall only be permitted to deliver in part where the Company has confirmed in writing or on the Order Form that it is willing to accept delivery in part.

8.4 If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:

8.4.1 terminate the Agreement in whole or in part without being liable to compensate the Supplier for any losses arising as a result of such cancellation or to make any payment to the Supplier other than in respect of Goods actually delivered or Services actually rendered to the Company prior to the date of such termination;

8.4.2 refuse to accept any subsequent delivery of the Goods or provision of the Services which the Supplier attempts to make;

8.4.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods or Services in substitution from another supplier; and

8.4.4 claim damages for any reasonable additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods or provide the Services on the due date.

8.5 Any signature on behalf of the Company on the delivery note is not evidence that the correct number or type of Goods has been delivered or that the Goods supplied are in good condition or otherwise meet the requirements of the Agreement or the relevant Order. The Company shall not be deemed to have accepted the Goods or Services until it has had a reasonable time to inspect them following delivery and has not notified the Supplier of its rejection of the Goods or Services within that time. The Company shall also have the right to reject the Goods and/or Services as though they had not been accepted for a reasonable time after any latent defect in the Goods or Services has become apparent. If the Company does not accept the Goods and/or Services as conforming to the Agreement, the relevant Order or any Specification, it may exercise any of the remedies set out in Condition 17.

8.6 No Goods supplied or Services performed under the Agreement earlier than the date for delivery set out in the Order, or in any delivery schedule, will be accepted or paid for unless the Company notifies the Supplier in writing of its intention to accept the same.

8.7 The Supplier shall supply the Company on delivery of the Goods with full and clear operating, storage, handling and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the Company to accept delivery of the Goods.

8.8 Unless the Company expressly agrees otherwise in writing, containers and packing must be supplied free but will be returned to the Supplier, if required by written notice from the Supplier to the Company, at the Supplier's risk and expense.

8.9 Where more than one item of Goods is involved in the Order and the Company agrees to accept delivery by instalments, the Agreement shall be construed as a separate contract in respect of each instalment. Nevertheless failure to deliver any instalment shall entitle the Company at its option to treat the Agreement as repudiated.

8.10 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

8.11 The Supplier shall, free of charge and within 30 days from the giving of notice as provided below, either repair or replace (as the Company shall elect) such of the Goods as may either be damaged in transit or having been placed in transit, fail to be delivered to the Company provided that:

- 8.11.1 in the case of damage to such Goods in transit, the Company shall within 30 days of delivery give notice in writing to the Supplier that the Goods have been damaged;
- 8.11.2 in the case of non-delivery, the Company shall (provided that the Company has been notified of dispatch within 10 days of the notified date of delivery) give notice to the Supplier that the Goods have not been delivered.
- 8.12 If the Goods require assembly and installation, the Supplier shall:
  - 8.12.1 carry out such work in accordance with Condition 2.4 above;
  - 8.12.2 comply with the Company's requirements relating to access to and use and security of, the Company's premises and shall keep the Company's premises clean and tidy at all time; and
  - 8.12.3 following any such assembly or installation, restore the Company's premises on which it has been installing the Goods to the condition they were in before it commenced such installation.

## 9 SERVICING

- 9.1 Unless otherwise agreed, the Supplier will, in all cases where it supplies machinery or equipment under or in connection with an Order, maintain for at least the normal life of the machinery or equipment an adequate stock of spare and replacements parts and components and an adequate number of trained and expert personnel so as to ensure that all necessary maintenance, adjustments or repairs to the machinery or equipment shall be carried out at reasonable expense to the Company with the minimum delay.

## 10 CUSTODY

- 10.1 If the Order relates to the application by the Supplier of Services (including any process) to goods supplied by the Company to the Supplier for that purpose the following additional conditions shall apply to the Agreement whether the goods supplied belong to the Company or to any third party:
  - 10.1.1 The Supplier shall be a bailee of the goods and shall only hold them for the purpose of applying the Services thereto.
  - 10.1.2 The Supplier shall at times, while such goods are in its care and control (or the care and control of any agent or contractor to the Supplier) insure the same with a reputable insurer to the replacement value of such goods against loss, damage or destruction and shall inform the Company forthwith if the goods are lost, damaged or destroyed and pay to the Company the full replacement value of such goods and shall indemnify the Company against any expenses, liability, loss, claim or proceedings by reasons of, or in consequence of, such loss, damage or destruction.

## 11 WORK ON THE COMPANY'S PREMISES

- 11.1 The Supplier and its servants, agents and sub-contractors shall at all times whilst on the Company's premises and whilst accessing the Company's information technology systems:
  - 11.1.1 comply with any rules or regulations issued by the Company and obey any reasonable instructions of the Company or its servants; and
  - 11.1.2 shall in any event at all times comply with the provisions of all Regulations relating to health and safety and environment.

## 12 PERSONNEL

- 12.1 The Supplier shall ensure that all Personnel who are given access to any of the Company's premises are:
  - 12.1.1 of smart and clean appearance and polite;
  - 12.1.2 suitably trained, qualified, skilled and experienced in the provision of the Services; and
  - 12.1.3 required to maintain confidentiality in relation to any information which comes into their possession regarding Company and/or any third party as a result of them providing the Services.
- 12.2 The Company reserves the right to require the Supplier to remove and replace at any time any individual from the Personnel. In such cases, Supplier shall provide a suitable and acceptable replacement as soon as is reasonably practicable.
- 12.3 The Supplier shall be solely liable for the remuneration of all Personnel and shall indemnify and keep indemnified the RSPB, the Company and any of its Subsidiaries or Holding Companies and any third party which replaces the Supplier as a provider of Services (together the "Indemnified Persons") against any and all liabilities, losses, damages, injury, costs, claims and expenses (including reasonable legal fees) awarded against or incurred or paid by any Indemnified Person as a result of or in connection with:
  - 12.3.1 the employment or, as the case may be, engagement or termination of employment or engagement of such Personnel by Supplier; and/or
  - 12.3.2 the transfer or any allegation that the contract of employment in respect of any such Personnel transfers or has transferred as a matter of law, to an Indemnified Person. In the event of such an allegation, the relevant Indemnified Person shall be

entitled to terminate the employment of any such Personnel immediately on becoming aware of such transfer or allegation.

### 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Unless otherwise agreed in writing, all Intellectual Property Rights in and to the outputs of the Services and any Specifications are hereby assigned with full title guarantee (including by way of a present assignment of future copyright and/or unregistered design right) by the Supplier and shall vest in the Company. The Supplier shall (at the request of the Company, but at the Supplier's cost and expense) do all such acts and things (including executing all documents) required to vest such Intellectual Property Rights in the Company in accordance with this Condition 13.1.
- 13.2 The Supplier warrants that the Goods, the Specifications, the materials and the use by the Company of the Services shall not infringe any Intellectual Property Rights of any third party. The Supplier shall keep RSPB, the Company and all of its Subsidiaries and Holding Companies indemnified against any and all liabilities, losses, damages, injury, costs, claims and expenses (including reasonable legal expenses) awarded against or incurred or paid by the RSPB, the Company or its Subsidiaries or Holding Companies (as the case may be) arising out of or in connection with any breach by Supplier of this Condition 13.2.

### 14 DATA PROTECTION

- 14.1 Whenever the Supplier processes personal data on the Company's behalf:
- 14.1.1 The Company shall be the controller and the Supplier shall be the processor in respect of such personal data; and
- 14.1.2 The Supplier shall only process such personal data on the documented instructions of the Company and in full compliance with this Agreement and any obligations imposed on the Supplier by applicable Data Protection Law.
- 14.2 If the Supplier is based outside the EU, and have to appoint an EU representative, the Supplier must provide the Company with that person's details.
- 14.3 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk to the rights and freedoms of natural persons, the Supplier must implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 14.4 The measures referred to in the previous paragraph of this Agreement shall include, inter alia, the following (as appropriate):
- 14.4.1 the pseudonymisation and encryption of personal data;
- 14.4.2 the Supplier's ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 14.4.3 the Supplier's ability to restore the availability of and access to personal data in a timely manner in the event of a physical or technical incident;
- 14.4.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing; and
- 14.4.5 providing any assistance the Company reasonably requires in order for it to implement appropriate technical and organisational measures to protect personal data.
- 14.5 In assessing the appropriate level of security to be taken, the Supplier will take account of the risks presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 14.6 The Supplier must ensure that all persons (including employees) with access to personal data processed on behalf of the Company are made aware of their data protection and security obligations and do not process such personal data except in accordance with the Company's instructions.
- 14.7 The Supplier may not engage another processor without the Company's prior specific or general written authorisation. In the case of general written authorisation, the Supplier must inform the Company of any intended changes concerning the addition or replacement of other processors and allow the Company reasonable opportunity to object to such changes. The Supplier may not use a processor which the Company has objected to.
- 14.8 If the Supplier engages another processor to carry out specific processing activities on behalf of the Company, the Supplier must ensure that the other processor:
- 14.8.1 only does so on the same terms imposed under this policy; and
- 14.8.2 provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR (including the requirements relating to security, integrity and confidentiality); and where that other processor fails to fulfil its data protection obligations, the Supplier shall remain fully liable to the Company for the performance of those obligations.

- 14.9 In the event a data subject makes a request relating to the exercise of his or her legal rights in relation to personal data, the Supplier shall cooperate with the Company to the extent it reasonably requires in order to respond to that request Supplier. This includes providing the Company with such information and assistance as it requires to do any of the following:
- 14.9.1 respond to a request by a data subject for access to his or her data;
  - 14.9.2 erase personal data in accordance with the data subject's right to erasure;
  - 14.9.3 allow the data subject to exercise his or her right to restrict processing;
  - 14.9.4 notify any persons who have received personal data about any rectification, erasure or restriction of processing which has taken place at the request of a data subject;
  - 14.9.5 provide the data subject with a copy of his or her data in a structured and common electronic format; and/or
  - 14.9.6 give effect to the data subject's rights (under Articles 21 and 22) to object to profiling, automated decision making and to processing for direct marketing purposes.
- 14.10 Information and assistance provided under this Agreement must be given without undue delay and in such time as the Company reasonably requires in order for it to comply with its obligations under Data Protection Law.
- 14.11 The Supplier must also cooperate with any requests by a supervisory authority.
- 14.12 If the Supplier becomes aware of a personal data breach relating to personal data the Supplier is processing on behalf of the Company the Supplier must:
- 14.12.1 notify the Company as soon as reasonably practicable upon becoming aware of the breach by emailing your contact at the Company who manages your account and copying in [dpofficer@rspb.org.uk](mailto:dpofficer@rspb.org.uk). The notification must describe the nature of the personal data breach, including where possible:
    - (a) the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
    - (b) the name and contact details of the Supplier contact from whom more information can be obtained;
    - (c) to the extent possible, details of the likely consequences of the personal data breach; and
    - (d) measures the Supplier has taken or proposes to take to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effect.
  - 14.12.2 provide the Company with such information and assistance as it reasonably requires in relation to the personal data breach (including in relation to action to remedy or mitigate the breach);
  - 14.12.3 document the personal data breach and any related action taken by the processor.
  - 14.12.4 If the Supplier is required to appoint a data protection officer under the GDPR it must ensure that, before processing Personal Data on behalf of the Supplier it makes such an appointment and publishes the data protection officer's details and communicates them to the Company and the supervisory authority.
- 14.13 Taking into account the nature of the processing and the information available to the Supplier, the Supplier must provide the Company with such information and assistance as it reasonably requires in order to:
- 14.13.1 carry out privacy impact assessments (as set out in Article 35);
  - 14.13.2 consult with a supervisory authority prior to processing (as set out in Article 36); and/or
  - 14.13.3 meet any obligations under Data Protection Law which derive from the activities described above.
- 14.14 After the completion of the processing on behalf of the Company, the Supplier must (at the Company's choice) delete or return all personal data processed on its behalf. The Supplier must also delete any copies of such personal data, unless the Supplier is required to store such copies to comply with a legal requirement (in which case the Supplier may store such copies to the extent necessary to comply with the law).
- 14.15 The Supplier shall maintain a written record (which they must make available to the supervisory authority on request) of all categories of processing activities carried out on behalf of the Company, containing:
- 14.15.1 the names, contact details and (where applicable) data protection officer details for the Company and the Supplier;
  - 14.15.2 the categories of processing carried out on behalf of the Company;
  - 14.15.3 where applicable, details of transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards; and



- 14.15.4 a description of the technical and organisational security measures.
- 14.16 The Supplier must not transfer personal data to a country or international organisation outside the European Economic Area unless the Company has consented to the transfer and:
- 14.16.1 the EU commission has decided that country or organisation ensures adequate protection under Article 45;
- 14.16.2 appropriate safeguards are in place (as set out in Article 46); or
- 14.16.3 one or more of the derogations in Article 49 applies.
- 14.17 In the event of a breach of Data Protection Law which results in damage to data subjects, unless the Supplier is not responsible for the event which led to the damage, the Supplier will be liable for such damage and must ensure the data subject is effectively compensated.
- 14.18 To the extent that the Supplier is providing any Services which involves the processing, transmission or storing of any credit or debit card payments and/or cardholder information on behalf of the Company, it is agreed that:
- 14.18.1 the Supplier shall be fully responsible for the security of cardholder data that it possesses, including all functions relating to storing, processing and transmitting of the cardholder data;
- 14.18.2 the Supplier affirms that it has complied with all applicable requirements to be considered PCI DSS compliant and has performed the necessary steps to validate its compliance with the PCI DSS;
- 14.18.3 the Supplier agrees to supply the current status of the Supplier's PCI DSS compliance status and evidence of its most recent validation of compliance upon execution of these terms and conditions to the Company. The Supplier must supply to the Company a new status report and evidence of validation of compliance at least annually; and
- 14.18.4 the Supplier will immediately notify the Company if it learns that it is no longer PCI DSS compliant and will immediately provide the Company with details of the steps being taken to remediate the non-compliance status. In no event should the Supplier's notification to the Company be later than five working days after the Supplier learns it is no longer PCI DSS compliant.

## 15 FORCE MAJEURE

- 15.1 For the purpose of the Agreement the term Force Majeure shall mean:
- (a) war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo;
  - (b) Rebellion, revolution, insurrection, military or usurped power or civil war;
  - (c) Riot, commotion or disorder except where solely restricted to employees of the Supplier or its agents or sub-contractors;
  - (d) Earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure.
  - (e) A general industrial dispute not limited to the employees of the Supplier or the employees of any of its agents or subcontractors.
- 15.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then that party shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 15.3 Neither party shall be considered to be in default of its obligation under the Agreement to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Agreement and which was not foreseeable at the date of the Agreement. In the event that under such circumstances the Agreement has not been performed for a period exceeding 2 months or it appears impossible or unlikely that the whole or a substantial part of the Agreement shall be capable of performance for a period exceeding 2 months, then the non-defaulting party may elect to terminate the Agreement upon 2 weeks written notice without any liability on that party.
- 15.4 The Supplier shall be liable for and shall not be excused non-performance of the Agreement due to, any performance or non-performance by its employees, sub-contractors or agents.

## 16 DISPUTE RESOLUTION

- 16.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this contract through prompt negotiations between senior executives of the parties, who have authority to settle the same.
- 16.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties agree to refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) model procedure.
- 16.3 If the matter has not been resolved by the mediation procedure within 60 days of the initiation of that procedure, or if any party will not participate in the mediation procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales, or in Scotland if so determined pursuant to Condition 20.7. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on the appointment of an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. The Arbitrator shall have no connection with the

mediator or the mediation proceedings, unless both parties have given written consent.

- 16.4 Each party shall be liable for their own costs, including legal costs, through the mediation and arbitration process but the costs and expenses of the mediator or arbitrator shall be shared equally between the parties unless otherwise determined by the Arbitrator.
- 16.5 All negotiations connected with the dispute, mediation or arbitration process shall be conducted in strict confidence and any settlements arising from the process shall be recorded in writing and shall remain binding on all parties.
- 16.6 Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

## 17 TERMINATION

- 17.1 Without prejudice to Condition 17.2 the Company shall be entitled to cancel any Order in whole or in part by giving notice to the Supplier at any time prior to delivery of the Goods or performance of the Services in which event the Company's sole liability shall be to pay to the Supplier fair and reasonable compensation on a time and materials basis for work already undertaken at the time of cancellation but such compensation shall not include loss of anticipated profits or any indirect or consequential loss.
- 17.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Agreement forthwith if:
  - 17.2.1 the Supplier commits a material breach of any of the terms and conditions of the Agreement and, without limitation, for these purposes a breach of the warranties in Condition 7 or any of the conditions or warranties implied into the Agreement by the Sale of Goods Act 1979 shall be a material breach;
  - 17.2.2 any distress, execution or other legal process is levied upon any of the assets of the Supplier;
  - 17.2.3 the Supplier:
    - (a) stops or suspends, or declares any intention to stop or suspend, its business or payment of its debts or any class of its debts generally or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or otherwise becomes insolvent;
    - (b) a receiver or administrative receiver is appointed in respect of the Supplier or the whole or any part of its assets or undertaking, the Supplier requests the appointment of such a person or any step is taken to enforce any charge, mortgage or other security interest over all or any [material] part of its assets or undertaking or any of the same is or becomes enforceable;
    - (c) a notice is issued for the purposes of convening a meeting to approve the placing of the Supplier in administration or liquidation, or a petition is presented or an order made for the administration or liquidation of the Supplier or the Supplier otherwise becomes subject to dissolution proceedings;
    - (d) a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended by the Insolvency Act 2000), a scheme of arrangement under section 895 of the Companies Act 2006 or any other arrangement, compromise or composition of the Supplier's debts, or any class of its debts, is proposed or made by or with the Supplier; or
    - (e) a judgment, order or award made against the Supplier is outstanding and not discharged within 10 days or if any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of the Supplier.
  - 17.2.4 the Supplier ceases or threatens to cease to carry on its business;
  - 17.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Agreement has been adversely affected; or
  - 17.2.6 the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Supplier.
- 17.3 The Company may terminate the Agreement or any Order at any time on no less than 28 days notice in writing to the Supplier with no further liability to the Supplier except for the Charges payable during that period of notice. The Company may terminate the Agreement or any Order at any time in writing to the Supplier with no further liability to the Supplier if the Supplier has committed a crime or has become involved in a situation or activity which, in the reasonable opinion of the Company, has a negative effect on the reputation of the Company or any aspect of its business or which could expose the Company to scandal or disrepute.
- 17.4 The termination of the Agreement, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 17.5 On expiry or termination of the Agreement, the Supplier and any servants, agents or sub-contractors shall ensure that all documentation, data and information (including all copies of such information stored in any written or electronic form) which constitutes confidential information of the Company shall be returned to the Company forthwith and, upon the Company's written request, shall confirm full compliance with this Condition 17.5 in writing.
- 17.6 On expiry or termination of this Agreement, the Supplier agrees to grant full access to its premises to the Company, its servants, agents or sub-contractors in order for the full retrieval of any Goods which are owned by the Company but held by the Supplier in accordance with Condition 10 to take place.

- 17.7 On expiry or termination of this Agreement, the Supplier shall (unless the Company specifies otherwise) fulfil all outstanding Orders in accordance with their terms.

## 18. REMEDIES

- 18.1 Without any prejudice to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with the Agreement, the Company may:
- 18.1.1 reject the Goods (in whole or in part) and return the Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid forthwith by the Supplier; or
  - 18.1.2 require the Supplier, at the Supplier's own expense, (at the choice of the Company) promptly to repair any fault or defect in the Goods or do any work necessary to make the Goods or Services comply with the Agreement and/or the relevant Order or to replace the Goods concerned with Goods which comply with the Agreement and/or the relevant Order; or
  - 18.1.3 carry out, at the Supplier's expense, any work necessary to make the Goods and/or Services comply with the Agreement and/or the relevant Order.

## 19 ASSIGNMENT

- 19.1 Each Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under this Agreement or any Order without the prior written consent of the Company. In the event the Supplier is permitted to sub-contract any part of the Services or its obligations under the Agreement, the Supplier shall ensure that the service contract with the third party supplier shall be made in accordance with these Conditions and the responsibility and accountability for the performance of the Services or provision of the Goods shall remain entirely with the Supplier.
- 19.2 The Company may assign the Agreement or any part thereof (including any Order) to any person, firm or company, subject to the Supplier's written agreement, that will not be unreasonably withheld.

## 20 GENERAL

- 20.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 20.2 Any provision of the Agreement which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent required be deemed severable and not part of the Agreement and the other provisions of the Agreement and the remainder of such provision shall not be affected.
- 20.3 Failure of or delay by the Company to enforce or partially enforce any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.
- 20.4 The parties to this Agreement do not intend that any of its terms will be enforceable, and such terms will not be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 20.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 20.6 The Company fully supports the requirements of the Bribery Act 2010. The Supplier warrants that it has in place and undertakes that it will comply with policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its own organisation and in connection with its dealings with the Company.
- 20.7 The Supplier warrants and undertakes that it shall fully comply with all appropriate requirements of the Proceeds of Crime Act 2002, the Money Laundering Regulations 2017, the Criminal Finances Act 2017 and the Modern Slavery Act 2015.
- 20.8 The formation, construction, performance, validity and all aspects of the Agreement are governed by English or Scottish law, depending upon the place of performance of the Agreement, and the parties submit to the exclusive jurisdiction of the English or Scottish Courts as applicable. In the event of a disagreement between the Company and the Supplier over the appropriate jurisdiction for the Agreement then the decision will be taken by the Company.