

**DRAX STANDARD TERMS AND CONDITIONS**  
**OF PURCHASE (GOODS AND SERVICES)**  
**(LONG FORM)**

**1. Definitions and Interpretation**

- 1.1. In these Conditions, the following words shall have the following meanings unless the context requires otherwise:

**Affiliate:** means any Subsidiary of the Company, Holding Company of the Company, or Subsidiary of any such Holding Company (Subsidiary and Holding Company taking the meaning given in section 1159 of the Companies Act 2006).

**Applicable Laws:** means any law, statute, subordinate legislation, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, in each case which are relevant to the Contract, Goods and/or Services and which are in force from time to time.

**Background IP:** means Intellectual Property Rights existing and held by the Supplier prior to commencement of the Contract (including in any methodologies by which the Supplier provides goods and/or services similar to the Services or any pre-existing materials or data) and which have not been developed specifically for the Company or its Affiliates (including under any contract).

**Company:** means the company that issued the relevant Order.

**Company's Representative:** has the meaning given in Clause 9.2.3 of these Conditions.

**Conditions:** means these terms and conditions for the purchase of Goods and/or Services.

**Confidential Information:** means all information and data disclosed by or on behalf of either party (or its affiliates) to the other (including its employees, officers, sub-contractors, advisors, representatives, affiliates and agents) relating to its (or its affiliates') operations, processes, plans, specifications, inventions, products, know-how, trade secrets, customers or other business affairs, and any other information that would be regarded as confidential by a reasonable business person.

**Contract:** means the contract between the Supplier and the Company for the purchase of Goods and/or Services made pursuant to the relevant Order, and which incorporates these Conditions (together with the applicable terms and conditions of any Framework Agreement), as further set out in Clause 2.3.

**Deliverables:** means the deliverables, documents and output provided pursuant to the Services.

**Delivery:** means the delivery of the specified quantity of Goods in an acceptable condition, to the relevant delivery location identified in the Contract (or to such location as the Company may require) on the date and time (if any) specified in the Contract (or if not specified such reasonable date and time as the Company may require) (and "Deliver" and "Delivered" shall be construed accordingly).

**Force Majeure:** has the meaning given in Clause 18.1 of these Conditions.

**Foreground IP:** means Intellectual Property Rights comprised in or arising from the Goods, Services and/or the Deliverables (in each case except for Background IP) or else that are developed specifically for the Company (or its Affiliates).

**Framework Agreement:** means (if any) the framework agreement relevant to the Goods and/or Services, entered into between the Supplier and the Company (or any of its Affiliates), and pursuant to which the Order was issued.

**Goods:** means the goods (or any part of them) to be supplied to the Company by the Supplier under and in accordance with the Contract, including any goods supplied in the course of performing the Services, and where appropriate, including such packaging as may be required for the immediate containment or handling of the Goods but excluding packaging used for convenience of distribution.

**Good Industry Practice:** means the degree of skill, diligence, prudence and foresight reasonably and ordinarily expected from a skilled and experienced supplier engaged in the same or similar type of business

under the same or similar conditions and to a high professional standard (including in relation to the techniques, practices and procedures used).

**Intellectual Property Rights:** means any and all intellectual property rights protected under the law anywhere in the world, including patents, designs, copyright and related rights, trade marks, business names and domain names, rights in data and database rights, rights in get-up, goodwill and the right to sue for passing off, rights to use, and protect the confidentiality of confidential information (including know-how and technical information), whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar and equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies:** means the policies, procedures and rules of the Company and relevant Affiliates in force from time to time including on-site rules, health and safety, anti-bribery, corruption, data protection, ethics, corporate social responsibility, slavery, human trafficking, and such other of the policies, procedures and rules of the Company and relevant Affiliates as provided or made available to the Supplier from time to time, and shall include those requirements known as “Drax Management Instructions”.

**Order:** means a purchase order placed by the Company for goods and/or services to be provided by the Supplier, as issued by the Company to the Supplier in writing, including (where applicable) any Specification, Special Conditions and/or other documents referred to therein.

**Plant and Equipment:** means any plant, machinery and/or equipment of the Company (or its Affiliates) in respect of which the Services are to be performed.

**Price:** means the agreed consideration for the relevant Goods and/or Services as calculated pursuant to the Framework Agreement or, if there is no Framework Agreement or agreed price under a Framework Agreement, then as otherwise stated in the Order or as otherwise agreed between the parties under Clause 10 of these Conditions.

**Return Address:** has the meaning given in Clause 15.1.2 of these Conditions.

**Returned Goods:** has the meaning given in Clause 15.1 of these Conditions.

**Services:** means any services to be provided by the Supplier to the Company under and in accordance with the Contract (including any part of the Services as the context requires).

**Site:** means the site or sites of the Company (or its Affiliates) where the Goods shall be Delivered and/or the Services shall be performed by the Supplier.

**Special Conditions:** means the special terms and conditions (if any) set out in, or appended to, an Order.

**Specification:** means the specification or description of the Goods and/or Services, including any related plans, drawings, designs and technical information or data, as set out in, or appended to, an Order or Framework Agreement.

**Supplier:** means the person, firm or company who supplies the Goods and/or Services pursuant to the Contract.

**Supplier Personnel:** means any employee, officer, agent, representative and/or sub-contractor or supplier (and their respective employees) used by the Supplier to provide the Goods and/or Services or in connection with the performance of the Supplier’s obligations under the Contract.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment thereto or re-enactment thereof (including by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014).

- 1.2. References to a **person** include a natural person, corporate or unincorporated body (whether or not with separate legal personality). A reference to a **party** includes its personal representatives, successors or permitted assigns.
- 1.3. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.4. A reference to a statute or statutory provision includes such statute or statutory provision as it may be amended, extended or re-enacted.
- 1.5. A reference to **in writing** or **written** includes e-mails.
- 1.6. Headings are for ease of reference only and shall not affect the interpretation of construction of these Conditions. References to **Clauses** are, unless otherwise provided, references to clauses of these Conditions.

## **2. Application of Conditions**

- 2.1. These Conditions shall apply to all purchases of Goods and/or Services from the Supplier pursuant to the Order, and (together with the relevant terms of any Framework Agreement) are the only terms upon which the Company is prepared to deal with the Supplier.
- 2.2. These Conditions (together with the Order and the relevant terms of any Framework Agreement) shall prevail to the exclusion of any terms or conditions endorsed upon, delivered with or contained in the Supplier's quotations, acknowledgments or acceptances of orders, specifications or similar documents, or which are implied by trade, custom, practice or course of dealing, and the Supplier waives any right which it otherwise might have to rely on such terms or conditions.
- 2.3. Where an Order is issued under a Framework Agreement, the constituent parts of the Contract and the order of priority between them shall be as set out in the Framework Agreement. Otherwise, the Contract shall constitute both these Conditions and the Order and in the event of any conflict, ambiguity or inconsistency between the constituent parts of the Contract the order of priority shall be (a) Special Conditions; (b) Conditions (c) Order (excluding the Special Conditions, Specification and other documents referred to in the Order); (d) Specification; (e) other documents referred to in the Order.

## **3. Formation of Contract**

- 3.1. Each Order constitutes an offer by the Company to purchase the relevant Goods and/or Services from the Supplier in accordance with these Conditions.
- 3.2. Each Order shall be deemed to be accepted by the Supplier on the earlier of:
  - (a) the date that acceptance or deemed acceptance of the Order occurs under a Framework Agreement;
  - (b) the Supplier issuing a written acceptance of the Order; or
  - (c) the Supplier doing any act consistent with fulfilling the Order,at which point the Contract shall come into existence and be binding on the parties from that date.
- 3.3. To the extent that Goods and/or Services or any part of the Goods and/or Services supplied from time to time relate to any project, asset, Site, property, personnel, business or other item of an Affiliate ("**Relevant Affiliate**") rather than the Company, then it is agreed that (to that extent) the Company acts and acted for and on behalf of the Relevant Affiliate in procuring and receiving those Goods and/or Services. In respect of such Goods and/or Services, the Relevant Affiliate shall have the full ability to enforce the Contract (including in relation to costs, loss and/or damage suffered by it) on the same terms as the Company.
- 3.4. The Supplier shall be deemed to have examined the Site, together with any relevant Plant and Equipment, and to have considered the scope of the proposed Specification before agreeing the Price for the proper completion of the Services and/or delivery of Goods.
- 3.5. In the event that a discrepancy, error or omission for which the Supplier is responsible arises, the Supplier shall promptly remedy the same at its own expense.

## **4. Plant and Equipment**

- 4.1. All Plant and Equipment shall remain the property of the Company at all times (together with any product, substance, emission or item created, produced or generated by such Plant and Equipment). Plant and Equipment shall be used by the Supplier in the execution of the Services only (and then only to the extent expressly permitted by the Company) and for no other purpose whatsoever.
- 4.2. The Supplier shall be responsible to ensure that any Plant and Equipment or any other property of the

Company (or its Affiliates) is suitable in all respects for the purpose for which it is provided. The Supplier shall without delay notify the Company if it discovers any defect or deficiency in any Plant or Equipment or any other property of the Company (or its Affiliates), including that it does not comply in all respects with Applicable Laws, or otherwise forms the view that it requires replacement or refurbishment. The Supplier shall not use any such identified Plant or Equipment or property unless the Company instructs it to do so after receipt of such notice.

- 4.3. The Supplier shall not, without prior written consent from the Company, use any of the Company's (or its Affiliates') facilities, property, equipment, tools, machinery, vehicles, goods, plant, substances, chemicals, emissions, utilities, services or by-products. The Company shall be entitled to make a reasonable charge to the Supplier for the use of any of such items and the Supplier shall use the same at its own risk and be fully responsible for any loss of or damage to anything so supplied (subject to fair wear and tear) and not, without the prior written consent of the Company, dispose of any such items.

## **5. Removal of Plant and Equipment Off-Site**

- 5.1. Where, in order for the Services to be carried out, any Goods and/or Plant and Equipment are collected by or sent to the Supplier at a location other than the Site:

- 5.1.1. risk in the Goods and/or Plant and Equipment shall pass to the Supplier at such time as they are collected by the Supplier or leave the possession of the Company or its relevant Affiliate (whichever is earliest) and shall remain at the risk of the Supplier until the Company is satisfied (acting reasonably) that their re-delivery to the Site or any other designated premises of the Company or its relevant Affiliate has taken place;
- 5.1.2. title in any Plant and Equipment shall at all times be retained by the Company (or its relevant Affiliate);
- 5.1.3. title in any Goods that the Company has taken title to in accordance with these terms, shall at all times be retained by the Company;
- 5.1.4. the Supplier shall not dispose of such Goods and/or Plant and Equipment, and the restriction on use of Plant and Equipment in Clause 4.1 shall also apply to the Goods;
- 5.1.5. the Supplier shall keep the Goods and/or Plant and Equipment separate from other goods and shall mark them clearly as being property of the Company;
- 5.1.6. the Supplier shall, on request, provide to the Company such security relating to the Goods, Plant and Equipment in such form as may be reasonably required by the Company;
- 5.1.7. the Supplier shall not remove, deface or obscure any markings or packaging on or relating to the Goods and/or Plant and Equipment put in place by the Company or any Affiliates (including markings referring to "Drax"); and
- 5.1.8. the Supplier shall insure any Goods and/or Plant and Equipment against all risks and for their full reinstatement value whilst it has risk in the same.

## **6. Delivery and Performance**

- 6.1. The Supplier shall supply the Goods, perform the Services and deliver all Deliverables (as applicable) in accordance with the terms of the Contract.
- 6.2. The Supplier shall Deliver the Goods carriage and insurance paid, in the manner of Delivery specified by the Company. Delivery of the Goods shall be completed on completion of unloading the Goods at the Site. Subject to any Special Conditions, the Supplier shall be responsible for safely and properly unloading the Goods as directed by the Company. The date for Delivery of the Goods shall be as specified in the Order or (if not specified) as reasonably directed by the Company.
- 6.3. The date(s) for performance of the Services shall be as specified in the Order or such other date(s) as are agreed by the Company, or, if not so specified or agreed, shall be as soon as reasonably practicable.
- 6.4. Time for Delivery of the Goods and performance of the Services shall be of the essence of the Contract.
- 6.5. Unless otherwise stipulated by the Company in the Order, Delivery of the Goods and/or performance of the Services shall take place within the Company's normal business hours.

- 6.6. The Supplier shall:
- 6.6.1. ensure that the Goods are properly packed and secured so as to reach their destination in an undamaged condition;
  - 6.6.2. ensure that each Delivery is accompanied by a delivery note which shows the name and address of the Supplier, the contents, any perishable contents (if any), any outstanding deliveries, the Order number, the destination as stated in the Order, and any other information required by the Company;
  - 6.6.3. ensure that all Goods supplied are suitably and sufficiently marked, endorsed and labelled with such information and advice necessary to enable the Company and its Affiliates to comply with Applicable Laws relating to the Goods and to instruct and warn any persons who may handle the Goods about any hazards to health and/or safety reasonably foreseeable from handling, using or processing the Goods provided however that if it shall not be reasonably practicable to mark, endorse or label the Goods accordingly, the Supplier shall fully instruct and advise such persons by an accompanying written notice at the time of despatch; and
  - 6.6.4. comply (and ensure all Supplier Personnel comply) at all times with all Company instructions and all Mandatory Policies. The Supplier shall also address the hazards selected in a hazard risk evaluation sheet provided by the Company.
- 6.7. The Company shall be entitled to a period of 14 days (or such other period of time as may be agreed between the parties) in order to inspect any Goods and/or Services prior to accepting such Goods and/or Services. Any such acceptance is without prejudice to the rights of the Company thereafter following the identification of any defect in or failure of the Goods or Services or any non-compliance with the Contract.
- 6.8. The Company shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.
- 6.9. The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately.
- 6.10. If the Goods are Delivered in excess of the quantities ordered, the Company shall not be bound to pay for the excess and such excess will be and will remain at the Supplier's risk and will be returnable or recoverable at the Supplier's own risk and expense.
- 6.11. The Supplier will comply with and perform and discharge its obligations relevant to its designated role under the CDM Regulations, and warrants and represents to the Company that it has the competence, capacity and resources to do so. "**CDM Regulations**" shall mean the Construction (Design and Management) Regulations 2015 and the related "Managing Health and Safety in Construction" – L153 Guidance issued by the Health and Safety Executive (including any replacement or modification of those regulations and/or the related guidance).

## **7. Quality and Defects**

- 7.1. The Supplier warrants, represents and undertakes that the Goods (including any repaired or replacement Goods) shall:
- 7.1.1. correspond with any applicable Specification or otherwise be capable of any specified standard of performance and in correspondence with their description;
  - 7.1.2. be of good and suitable industry design, quality, material and workmanship;
  - 7.1.3. be sufficiently within any 'sell by' date and with sufficient operational lifetime for the Company's intended use of the Goods;
  - 7.1.4. be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication (and in this respect the Company relies on the Supplier's skill and judgement);
  - 7.1.5. be free from any defects in design, materials or workmanship and (unless otherwise specified in the Special Conditions) shall remain so for twenty-four (24) months after Delivery of Goods or completion of the Services;
  - 7.1.6. (if samples or patterns are provided) equal in all respects to the samples or patterns; and

- 7.1.7. (if a standard of performance is specified) capable of the required standard of performance including, any performance guarantee as set out in the Special Conditions (if any).
- 7.2. The Supplier warrants, represents and undertakes that all Services (including any remedial or replacement Services) performed under the Contract shall be performed to a high standard, with all due skill and care, in a good and workmanlike manner and in accordance with Good Industry Practice.
- 7.3. The Supplier warrants, represents and undertakes that:
- 7.3.1. all Goods supplied and/or Services performed shall conform in all respects with the Order and any applicable Specification, and shall comply with all Applicable Laws (including the manufacture, labelling, packaging, handling and delivery of the Goods);
  - 7.3.2. the Supplier Personnel have the qualifications, professional competence and experience necessary to supply the Goods and/or perform the Services in accordance with the requirements of the Contract and shall be appropriately supervised;
  - 7.3.3. the Goods and/or Services and their use shall not in any way infringe or violate any Intellectual Property Rights nor any contractual, employment, property or other rights of any third parties;
  - 7.3.4. it has full capacity and authority to enter in the Contract and that it has (and shall maintain) all necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract; and
  - 7.3.5. it has the necessary expertise to perform the Contract and confirms that all statements and representations made in respect of the Goods and/or Services prior to and during the Contract are accurate.
- 7.4. The Supplier shall maintain sufficient quality, specification control, testing and inspection procedures to enable the Supplier to consistently comply with its obligations under the Contract and shall supply the Company with full details of such procedures on request and in any event immediately following any change in such procedures.
- 7.5. The Company has the right to inspect and test the Goods and/or Services at any time before or during Delivery of the Goods and/or performance of the Services.
- 7.6. If following such inspection or testing, the Company is of the opinion that the Goods and/or the Services do not (in whole or in part) conform or are unlikely to conform to the Contract or that the procedures are insufficient or inappropriate to ensure consistent conformity with the Contract, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure such conformity.
- 7.7. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and/or Services and procedures and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **8. Risk and Title**

- 8.1. The Goods shall remain at the risk of the Supplier until Delivery (including unloading and stacking and installation where appropriate), at which point risk in those Goods shall pass to the Company (but without prejudice to any right of return or rejection which may accrue to the Company under the Contract).
- 8.2. Title in the Goods shall pass to the Company on the earlier of (a) Delivery; or (b) payment for the Goods by the Company. Where payment for any Goods is requested by the Supplier prior to Delivery of such Goods, then as a condition of payment the Company may require such security or vesting certificates in such form as it may reasonably require.

## **9. Access to the Site**

- 9.1. The Company shall allow the Supplier such access to the Site as may reasonably be required for the performance of the Contract, on and from the date stated in the Contract or, if no such date is stated, then within a reasonable time. Site access shall be provided by the Company during normal working hours or at such other times as may be agreed.
- 9.2. The Supplier shall, and shall procure that each of the Supplier Personnel shall, at all times whilst on the Site:

- 9.2.1. without prejudice to Clause 6.6.4, comply in all respects with the provisions of all Applicable Laws that are relevant to the Site, in particular (but without limitation) such legislation or regulations as relating to safety, hygiene, health, welfare or the environment;
  - 9.2.2. without prejudice to Clause 6.6.4, comply with all instructions from the Company and all Mandatory Policies relevant to the Site;
  - 9.2.3. be under the direction of the proper manager or officer in charge of such premises or any part thereof or their nominee ("**Company's Representative**") and shall comply with the directions and regulations of Company's Representative;
  - 9.2.4. provide the Company in a timely manner, with such information in relation to the performance of the Contract as Drax may reasonably request;
  - 9.2.5. notify the Company immediately if it becomes aware of any health and safety hazard in connection with the performance of the Contract and shall comply with the instructions of the Company in relation thereto; and
  - 9.2.6. take all necessary care to avoid any interference with the operations and activities of the Company, the Affiliates and their employees and other contractors on the Site.
- 9.3. The Company's Representative may (in his discretion) refuse any Supplier Personnel access to any Site and/or order any person (including Supplier Personnel) to leave any Site, without limiting the Supplier's obligations under the Contract.

## **10. Price and Payment**

- 10.1. The Price of the Goods and/or Services shall be as stated in Contract and, unless otherwise agreed in writing by the Company, shall be exclusive of value added tax but inclusive of all other charges (including carriage and insurance). Once an Order has been accepted by the Supplier under Clause 3, the Price for the Goods and/or Services shall be fixed. Unless otherwise agreed in writing by the Company, no extra charges shall be effective.
- 10.2. Unless otherwise agreed in writing by the Company, the Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Contract. The Price includes all royalties or other charges which may be claimed or required to be paid in respect of rights or licences (including licences of Intellectual Property Rights) necessary to enable the Company freely to employ and use any Goods or Services supplied under the Contract.
- 10.3. The Company shall be entitled to receive any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.
- 10.4. Unless otherwise stated in the Contract, the Supplier shall invoice the Company after Delivery of the Goods and completion of the Services. Invoices shall be submitted in both hard copy and the Company and electronically to [accountspayable@drax.com](mailto:accountspayable@drax.com). The Company shall be under no obligation to accept invoices that are not submitted in both hard and soft copy. Each invoice shall include such supporting information as may be required by the Company to verify the accuracy of the invoice. To the extent that value added tax (or equivalent sales tax) is properly chargeable to the Company, then the invoice issued by the Supplier must be a valid VAT invoice.
- 10.5. Unless otherwise agreed in writing or save where the invoice is disputed, the Company shall pay the Price within sixty (60) days of receiving the Supplier's correctly submitted invoice in accordance with Clause 10.4. The Supplier acknowledges that it is the Company's policy not to effect third party payments and, accordingly, the Company shall only be required to make payment to an account which the Supplier is the beneficial owner of.
- 10.6. If the Company fails to pay any amount properly due and payable under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of two per cent (2%) per annum above the base rate for the time being of Barclays Bank plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Company shall pay the interest together with the overdue amount.
- 10.7. Without prejudice to any other right or remedy, the Company reserves the right to withhold or deduct or set-off or otherwise any amount owing from the Supplier or claimed from the Supplier against any amount payable by the Company or any of its Affiliates to the Supplier. The Supplier shall not be entitled to assert

any credit, set-off or counterclaim against the Company.

- 10.8. If there is any invoice which is in dispute (whether in whole or in part), the Company shall be entitled to withhold payment of the disputed amount. The parties shall enter into good faith discussions to resolve such dispute.
- 10.9. The Supplier shall keep records of all time and expenditure and in respect of Services time, expenditure and the nature of Services provided to the Company all together with supporting documentation and shall on request permit a duly authorised representatives of the Company reasonable access to such records and supporting documentation so that it may verify invoices submitted and shall retain the records and supporting documentation for a period of not less than two (2) years from completion of the Contract.
- 10.10. Payment of the Price for the Goods and/or Services shall not constitute acceptance by the Company of the Goods and/or Services.
- 10.11. The Company may nominate from time to time a representative to pay or collect monies on its behalf.

## **11. Liability and Indemnity**

- 11.1. The Supplier shall on demand indemnify, keep indemnified and hold harmless the Company and its Affiliates against:
  - 11.1.1. any and all loss, damages, injury, claims, costs, fines and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company or its Affiliates as a result of or in connection with:
    - (a) defective Goods or Services including defective workmanship, quality or materials and defective design (other than a design made, furnished or specified by the Company and for which the parties had agreed that the Supplier could disclaim responsibility);
    - (b) the failure of any Goods or Services to comply with any Specification or other terms of the Contract; and
    - (c) the negligence of the Supplier or the Supplier Personnel while they are on Site or any of the Company's or Affiliate's premises;
  - 11.1.2. any and all loss, damages, injury, claims, costs, fines and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company or any Affiliate as a result of or in connection with:
    - (a) actual or alleged infringement of any Intellectual Property Rights arising out of, or in connection with, the possession, use, manufacture or supply of the Goods or the receipt, use or possession of the Services (except to the extent that such claim is attributable to the Company modifying the Goods and/or Services without the agreement of the Supplier) or otherwise which relates to or arises from a breach of Clause 7.3.3;
    - (b) any death, personal injury or loss or damage to any property (real or personal, tangible or intangible) suffered or incurred by any person or entity to the extent it relates to or arises from the Goods and/or Services or the presence of the Supplier or the Supplier Personnel on the Site or other premises of the Company or its Affiliates, other than to the extent it arises from any default or responsibility of the Company; and
    - (c) any failure by the Supplier to comply with the provisions of Clause 12.
- 11.2. For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall, at its own expense, maintain in force, with a reputable insurance company such insurance as is required by law which applies to the provision of Goods and Services by the Supplier, and professional indemnity insurance and general third party liability insurance with a minimum limit of £5,000,000 (five million pounds) per occurrence, unless otherwise agreed in writing with the Company. At the request of the Company, the Supplier shall produce details of its insurance policies and evidence of payment of the then current premium.
- 11.3. Neither party shall be liable to the other for any loss of profit or indirect or consequential loss suffered or incurred by the other.
- 11.4. The liability of each party to the other under the Contract shall be limited in the aggregate to £5,000,000 or, if



higher, the aggregate Price paid or payable to the Supplier over the term of the Contract.

11.5. Nothing in the Contract (including this Clause 11) excludes or limits the Supplier's liability:

- (i) for death or personal injury;
- (ii) for fraud or fraudulent misrepresentation;
- (iii) under Clause 11.1.2 above;
- (iv) under Clause 19;
- (v) to rectify defects or deficiencies in the Goods and/or Services as provided in the Contract;
- (vi) to refund the Price as provided in the Contract; or
- (vii) for any liability that cannot be excluded or limited as a matter of law.

## **12. Confidentiality**

- 12.1. The Supplier shall, and shall procure that the Supplier Personnel shall, keep secret and confidential all Confidential Information that it may acquire from or relating to the Company and subject to Clause 12.2 below, will not use the Confidential Information for any purpose other than in the performance of the Contract unless otherwise agreed by the Company in writing.
- 12.2. The obligation of confidentiality referred to in Clause 12.1 shall not apply to any information which is:
- 12.2.1. already in the public domain or otherwise ceases to be of a confidential nature other than as a result of a disclosure by the Supplier in breach of this Contract;
  - 12.2.2. lawfully disclosed to the Supplier by a third party who is not subject to an obligation of confidentiality, and without an obligation of confidentiality being placed upon the Supplier; or
  - 12.2.3. required to be disclosed by law, an order of a Court of competent jurisdiction or the legally binding rules of any stock exchange.
- 12.3. To the extent necessary to perform the Contract, the Supplier may disclose the Company's Confidential Information to such Supplier Personnel as may reasonably be necessary, provided that the Supplier shall: (a) before disclosure, makes such Supplier Personnel aware of their obligations of confidentiality under these Conditions; (b) at all times procure compliance with such obligations of confidentiality; and (c) if requested by the Company, procure named Supplier Personnel execute a confidentiality agreement directly in favour of the Company.
- 12.4. This Clause 12 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

## **13. The Company's Property and Intellectual Property Rights**

- 13.1. Intellectual Property Rights in any drawings, specifications, plants, designs, data, materials, equipment or any other item supplied by the Company to the Supplier shall be retained by the Company (or its relevant Affiliate) used by the Supplier only for the purposes of the Contract (and then only to the extent expressly agreed by the Company).
- 13.2. The Supplier grants to the Company and its Affiliates a non-exclusive irrevocable royalty-free licence to use Background IP in connection with the Contract, the Goods, Services, Deliverables and in order to make full use of the Goods, Services, Deliverables and Foreground IP. Ownership of Background IP is retained by the Supplier.
- 13.3. Any Intellectual Property Rights in the Foreground IP created by the Supplier in performing the Contract (including all rights in, and ownership of, the Deliverables) are hereby assigned (by way of current assignment of future rights) by the Supplier to the Company with full title guarantee and free from third party rights. The Supplier agrees to execute all documents and assignments and do all such things as may be necessary to perfect the Company's title to such Intellectual Property Rights in the Foreground IP or to register the Company as owner of registerable rights. The Supplier agrees that the Company may share Foreground IP and/or any Deliverables with any Affiliate, and that such Affiliates may rely on the same (and

have the benefit of all rights under this Agreement in relation to Foreground IP and Deliverables) to the same extent as the Company.

- 13.4. All Intellectual Property Rights belonging to the Company (or its Affiliates) are and shall remain the exclusive property of the Company (or its relevant Affiliate). The Supplier shall use any Intellectual Property Rights belonging to the Company (or its Affiliates) for the purpose only of performing the Contract. The Supplier undertakes not to use, reproduce, modify or distribute any Foreground IP or Deliverables for any purpose other than for the purpose of performing the Contract.
- 13.5. The Supplier shall do (or procure to be done) all that is reasonably necessary for securing for the Company and its Affiliates the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licenced to the Company and/or its Affiliates above.

#### **14. Termination of the Contract**

- 14.1. The Company shall have the right at any time and for any reason to terminate the Contract by giving the Supplier not less than fourteen (14) days written notice whereupon the Supplier shall discontinue the performance of such works as the Company may determine and the Company shall pay to the Supplier fair and reasonable compensation for the relevant work-in-progress at the time of termination but excluding loss of anticipated profits or any consequential loss.
- 14.2. The Company shall have the right at any time by giving written notice to the Supplier to terminate the Contract immediately if:
  - 14.2.1. the Supplier commits a material breach of any of its obligations under the Contract and (if such a breach is capable of remedy) the Supplier fails to remedy such breach within fourteen (14) days of being required to do so by written notice;
  - 14.2.2. the Supplier commits a series of persistent minor breaches (which taken together amount to a material breach);
  - 14.2.3. the Supplier commits any act which brings or is likely to bring the Company into disrepute or which damages or is likely to damage the Company's interests;
  - 14.2.4. the Supplier undergoes a change of control ("**control**" having the meaning attributed to it in section 1124 of the Corporation Tax Act 2010); or
  - 14.2.5. the financial position or technical capability of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3. Either party shall have the right at any time by giving written notice to the other party to terminate the Contract immediately if:
  - 14.3.1. any undisputed material sum remains unpaid by the other party under the Contract more than 60 days after a reminder notice is provided to such other party (issued after the due date for payment) requiring such other party to pay such sum; or;
  - 14.3.2. any distress, execution or other process is levied upon any of the assets of the other party; or
  - 14.3.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or an application is made to court or an order for the appointment of an administrator or notice of intention to appoint an administrator is given, or negotiations are commenced with all or any class of its creditors with a view to rescheduling of debts or makes a proposal for or enters into any compromise or arrangement with its creditors, or a petition is filed or notice is given or a resolution is passed or an order is made for or in connection with the winding up of the other party (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation), or a receiver is entitled to be or is appointed over the assets of the other party, or the other party otherwise discontinues all or a significant part of its business operations.
- 14.4. Termination of the Contract for any reason shall be without prejudice to the accrued rights of the parties as at termination. Any terms of the Contract which expressly or impliedly have effect following termination will continue to be enforceable notwithstanding termination.

- 14.5. Within seven (7) days of termination (for any reason) the Supplier shall return to the Company all Plant and Equipment and any property of the Company or any Affiliate removed from the Company's or any Affiliate's premises and all copies of the Company's (or any Affiliate's) Confidential Information provided to the Supplier for the purposes of the Contract. If the Supplier fails to do so the Company may (and the Supplier hereby grants and procures that any third party grants to the Company the right to) enter upon any premises of the Supplier or any third party where such Plant and Equipment, property or Confidential Information may be located and procure the Plant and Equipment, property and/or Confidential Information.
- 14.6. For the avoidance of doubt, termination of the Contract shall not terminate any Framework Agreement under which the Contract was created. Termination of any Framework Agreement shall be subject to the terms of the relevant Framework Agreement.

## **15. Returned Goods**

- 15.1. The Company may at its option return to the Supplier any ordered Goods (or complete individual items of the Goods) ("**Returned Goods**") that are in materially similar condition as they were upon Delivery and receive a full refund of the relevant Price subject to the following conditions:
- 15.1.1. the Company will provide written notice of its intention to return any Returned Goods to the Supplier and (at its option) provide details of where the Returned Goods are to be collected from in accordance with Clause 15.1.2;
- 15.1.2. if the Company has opted for Returned Goods to be collected, the Supplier shall, within five (5) days of receipt of the notice specified in Clause 15.1.1, provide details of the return address for the Returned Goods ("**Return Address**");
- 15.1.3. the Company or the Supplier (at the Company's option) shall arrange for the collection or delivery (as the case may be) of the Returned Goods; and
- 15.1.4. the Returned Goods must be collected by the Supplier promptly following notification by the Company.
- 15.2. Repayment of the Price for the Returned Goods shall be made upon return to the Supplier's Return Address or collection from the Site (as the case may be). Title to the returned Goods shall only revert to the Supplier upon the repayment of the price for the returned Goods. Risk in the Goods shall pass back to the Supplier upon the return of the Goods to the Return Address or collection of the Goods from the Site (as the case may be).

## **16. Remedies**

- 16.1. Without prejudice to any other right or remedy which the Company may have, if any Goods are not delivered or Services not performed when due, or damaged or sub-standard Goods or Services are delivered or performed, or any Goods or Services do not meet the Specification or any other requirement of the Contract, then the Company shall have the right (at its sole option and whether or not it has accepted the Goods and/or the Services) to any one or more of the following remedies:
- 16.1.1. to terminate or cancel the Contract either wholly or partially;
- 16.1.2. to reject the Goods and/or Services (in whole or in part) and return the Goods to the Supplier at the Supplier's own risk and expense;
- 16.1.3. to require the Supplier to immediately repair or replace the rejected Goods or to re-perform the rejected Services, in each case at the Supplier's expense, or to provide a full refund of the price of the rejected Goods and/or Services (if paid);
- 16.1.4. to refuse to accept any subsequent Delivery of Goods and/or performance of Services;
- 16.1.5. to require the Supplier and the Supplier Personnel to leave the Company's (and any Affiliate's) premises and the Site and to remove the Supplier's property or that of the Supplier Personnel brought onto such premises and dispose of such property by whatever means the Company deems fit;
- 16.1.6. to recover from the Supplier any incremental or additional expenditure or cost incurred by the Company or any Affiliate in obtaining substitute Goods and/or replacement Services from a third party or that is otherwise attributable to the Supplier's failure to deliver the Goods or perform the

Services in accordance with the Contract.

- 16.2. If the Supplier fails wholly or partially to: (i) Deliver by the due date; (ii) perform the Services either by the completion date specified in the Order or Contract; or (iii) perform the Services diligently, then the Company may, at its option, claim or deduct from the Price the amounts (if any) specified in the Special Conditions as liquidated damages. The parties agree that in all circumstances such sum is reasonable and necessary to protect the legitimate business interests of the Company and the Affiliates and represents a genuine pre-estimate of loss. To the extent that a Supplier's failure under this Clause 16.2 is caused by the Company's breach and/or act of prevention by the Company, then no liquidated damages shall apply.

## **17. Transfer of Undertakings**

- 17.1. The parties agree that TUPE will not apply to any Contract for the purchase of Goods and/or Services subject to these Conditions save as where expressly agreed between the parties that TUPE does apply.
- 17.2. In circumstances where TUPE does apply to any Contract for the purchase of Goods and/or Services subject to these Conditions, the Supplier:
- 17.2.1. agrees to fully co-operate with the Company in order to ensure that any transfer of employees is conducted in a lawful, efficient and sensible manner. Further, the Supplier agrees to provide the Company with all reasonable assistance to ensure a smooth transition in relation to any transfer of employees;
  - 17.2.2. will comply with all its obligations under TUPE, including but not limited to those under Regulations 11, 13 and 14 of TUPE (as applicable); and
  - 17.2.3. will comply with all legal and contractual obligations in respect of any employees transferring to the Supplier under TUPE.
- 17.3. The Supplier shall on demand indemnify, keep indemnified and hold harmless the Company against any and all direct, indirect and consequential loss, damages, injury, claims, costs, fines and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any failure by the Supplier to comply with its obligations under Clause 17.2 or any other obligations arising from the applicability of TUPE and/or the transfer of employees.

## **18. Force Majeure**

- 18.1. Neither party shall be liable to the other for any delay or failure to perform its obligations under the Contract, if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party, and which by its very nature could not reasonably have been foreseen or avoided or provided against, being of the nature of acts of God, war, riot, civil commotion, fire, flood, storm, malicious damage, act of terrorism or governmental order ("**Force Majeure**"). Any breach of Contract or fault or delay by the Supplier's suppliers or subcontractors or any industrial or civil action or dispute by the Supplier's workforce shall not be Force Majeure.
- 18.2. Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure event, the notice to specify details of the circumstances giving rise to the Force Majeure event and its expected duration.
- 18.3. The Company reserves the right to defer the date of Delivery or reduce the volume or scope of the Goods or performance of the Services or payment if it is prevented from or delayed in the carrying on of its business due to any Force Majeure event or if the Supplier is unable to supply Goods or provide the Services due to any Force Majeure event.
- 18.4. Both parties shall take reasonable action to mitigate the effect of any Force Majeure event and notify the other party immediately when Goods can be Delivered or Services provided either wholly or partially.
- 18.5. The Company shall be entitled (without limiting its other rights or remedies) to terminate the Contract if the Supplier suffers a Force Majeure event for a continuous period of fourteen (14) days.

## **19. Compliance**

- 19.1. The Supplier:
- 19.1.1. shall comply with all Applicable Laws, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");

- 19.1.2. shall not engage in any activity, practice or conduct which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct has been carried out in the UK;
- 19.1.3. shall comply with the Company's Mandatory Policies relating to anti-bribery and corruption (the "**Relevant Policies**");
- 19.1.4. represents and warrants that, at the date of the Contract, neither the Supplier nor any of its officers, employees or other persons associated with it:
- (a) has been convicted of any offence involving bribery and/or corruption anywhere in the world;
  - (b) has been or is or has been notified that it may be the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with bribery and/or corruption.
- 19.1.5. shall immediately notify the Company if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners as at the date of entering to the Agreement;
- 19.1.6. shall have and maintain in place throughout the duration of the Contract its own policies and procedures including (but not limited to) adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements, the Relevant Policies and this Clause 19.1 and shall enforce them where appropriate; and
- 19.1.7. shall ensure that all persons associated with the Supplier or other persons who are performing the Services in connection with the Contract comply with this Clause 19.1.
- 19.2. For the purposes of Clause 19.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under that Act). For the purposes of Clause 19.1, a person associated with the Supplier includes but is not limited to the Supplier's employees and agents, as well as any sub-contractor of the Supplier.
- 19.3. In performing its obligations under the Contract, the Supplier:
- 19.3.1. shall ensure that it, its officers, employees, sub-contractors and other persons associated with it, complies with the Modern Slavery Act 2015;
- 19.3.2. represents and warrants that, at the date of the Contract, neither the Supplier nor any of its officers, employees or other persons associated with it:
- (a) has been convicted of any offence involving slavery and human trafficking anywhere in the world;
  - (b) has been or is or has been notified that it may be the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
- 19.3.3. shall maintain a complete set of records of all documentation and materials provided to the Company in connection with the Contract and shall implement procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains. The Supplier shall make records available for inspection by the Company upon reasonable request; and
- 19.3.4. shall notify the Company as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 19.4. The Supplier acknowledges its obligations under the Criminal Finances Act 2017 ("**CFA 2017**") and is committed to operating its affairs in a way which does not involve any form of tax evasion. The Supplier must not by any act or omission cause the Company to be the subject of any liability, fines or penalties under Part 3 of the CFA 2017.
- 19.5. The Supplier shall at all times comply with all of its obligations pursuant to applicable laws and regulations of

any relevant jurisdiction (including the European Union) relating to data protection and data security, and shall not do anything which causes the Company (or any of its Affiliates) to incur any liability, fine or penalty in connection with such laws and regulations. To the extent that the Supplier's data protection and/or data security obligations under any Framework Agreement are more burdensome than those set out in this Clause 19.5, then such obligations shall be deemed to be incorporated into this Clause 19.5 (with all necessary changes having been made).

- 19.6. The Company may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach or suspected breach of this Clause 19.
- 19.7. The Supplier indemnifies the Company and its Affiliates against all payment, loss, liability, damage, action (including legal fees), cost, fines, financial penalty or expense of whatsoever nature paid, made, awarded against or incurred by the Company or its Affiliates arising out of or in connection with any breach by the Supplier of the obligations, representations and/or warranties under this Clause 19.

## **20. General**

- 20.1. The Supplier shall not assign, transfer, sub-contract or deal in any other manner with any or all of its rights or obligations under or arising from the Contract without the prior written consent of the Company. The Company may assign, novate, sub-contract, transfer, charge and/or mortgage all or any of its rights or obligations under or arising from the Contract.
- 20.2. The Supplier shall not use the Contract or the name of the Company or its Affiliates or the name "Drax" in any advertising or promotion without the Company's prior written consent.
- 20.3. Failure or delay by either party in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. A waiver by either party of any breach or default of any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of the Contract.
- 20.4. Each express right or remedy of the parties under the Contract is without prejudice to any other right or remedy of the parties.
- 20.5. If the Contract is created under a Framework Agreement then the notice provisions of that Framework Agreement shall apply to notices under the Contract. Otherwise, any notice to be given under the Contract by either party to the other shall be in writing, and to such address or email address as may have been notified to the other party from time to time. In any event, any notice to the Company relating to any breach or alleged breach, demand or claim for payment (other than invoices issued in the ordinary course under Clause 10) or termination or suspension or potential termination or suspension must be sent to [legal.notices@drax.com](mailto:legal.notices@drax.com).
- 20.6. Save for Affiliates, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20.7. The Contract contains the entire agreement between the parties in respect of the supply of Goods and/or Services to the Company by the Supplier. The Contract replaces any previous agreement or understanding between the parties but is without prejudice to any Framework Agreement or other contracts or purchase orders issued or created under such Framework Agreement.
- 20.8. The parties expressly acknowledge and agree that in entering into the Contract they are not relying on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract (provided that nothing in this Clause 20.8 shall exclude or restrict either party's liability for fraud or fraudulent misrepresentation).
- 20.9. If any provision (or part of any provision) of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if the Contract had been agreed with the invalid, illegal or unenforceable provision eliminated.
- 20.10. The Supplier is engaged as an independent contractor. Nothing in the Contract is intended to or shall be deemed to establish or imply any agency, partnership, joint venture or employee/employer relationship between the parties. No party shall have authority to act as agent for, or to bind, the other party in any way (including making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). The Contractor warrants that it is not acting for the benefit, or on the behalf,

of any other person or entity.

**21. Governing Law and Jurisdiction**

- 21.1. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 21.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation.