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Railpen Limited - Purchase Order Terms

1. GENERAL

- 1.1. These purchase order terms and conditions ("PO Terms") are incorporated in full into every Purchase Order placed by Railpen with the counterparty detailed in the Purchase Order (the "**Supplier**") unless such of Railpen and the Supplier have entered into a separate agreement in respect of the Services and/or Goods set out within the Purchase Order, which shall supersede these PO Terms.
- 1.2. No Supplier terms or provisions within or attached to any catalogue, invoice, other sales literature, document, tender, or dispatch/delivery note which are inconsistent with these PO Terms or which purport to add to or vary them in any way shall have any effect unless expressly accepted by Railpen in writing and duly signed by, or on behalf of, Railpen.
- 1.3. In the absence of such written and signed acceptance by Railpen under clause 1.2, the Supplier shall be deemed to have accepted these PO Terms by supplying the Goods and/or Services described within a Purchase Order, and hereby waives any rights it has under any of its own terms and conditions. Acceptance by Railpen of any Goods and/or Services shall not constitute acceptance by Railpen of the Supplier's own terms and conditions.
- 1.4. Each Purchase Order constitutes an offer by Railpen to purchase Goods and/or Services from the Supplier in accordance with these PO Terms. Subject to clause 1.1, the Purchase Order shall be deemed accepted on any act by the Supplier consistent with fulfilling the Purchase Order (the "**Commencement Date**").

2. DEFINITIONS & INTERPRETATION

- 2.1. Unless as specified elsewhere in these PO Terms, the following words shall have the following meanings:

"Railpen" means Railpen Limited, a company incorporated and registered in England and Wales under company registration number 02315380, whose current registered office address is at 7 Devonshire Square, London, EC2M 4YH (as updated from time to time);

"Business Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

"Confidential Information" means any information and data which has been or will be supplied by a Party (the '**Disclosing Party**') with the other Party (the '**Receiving Party**') in the performance of the Contract, which is

generally considered by the Disclosing Party to be commercially sensitive, confidential, proprietary or a trade secret, whether or not marked confidential, private or otherwise, including but not limited to copyright material supplied under restrictive licence, business plans, product or product development details, know how, pensions documentation, fees or fee scales, application solutions, software specifications, software code, software design and development details, names and sensitive information pertaining to it and/or any of its associated company's customers and prospects and marketing information, which is not publicly known and which is used in or otherwise relates to that Party's business, customers or financial or other affairs; or technical systems or processes, whether or not marked "confidential information", and all other information clearly designated as "confidential information";

"Contract" means together these PO Terms, the New Supplier Form and any and all Purchase Orders, as applicable;

"Data Protection Legislation" means all applicable laws, rules and regulations applicable from time to time relating to the processing of personal data relating to identified or identifiable individuals, including; (i) the retained EU law version of the General Data Protection Regulation (EU (2016/679)) as it forms part of the law of England and Wales by virtue of the European Union (Withdrawal) Act 2018; (ii) the Data Protection Act 2018; (iii) any legally binding guidance, guidelines, codes of practice and codes of conduct issued by the Information Commissioner from time to time; (iv) each of the aforementioned as updated, amended, or replaced from time to time;

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, data (including drafts) or as specifically described in the Purchase Order, as applicable;

"Fees" means the fees payable by Railpen to the Supplier for the supply of the Goods and/or Services as set out in the Purchase Order;

"Force Majeure Event" has the meaning given in clause 12.3;

“Goods” means the goods more specifically described in the Purchase Order, as applicable;

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

“Parties” means Railpen and the Supplier, and each shall be a **“Party”**;

“New Supplier Form” means any document provided by Railpen to the Supplier: (i) titled “New Supplier Form”; or (ii) requesting or containing the Supplier’s details and referring to these PO Terms.

“Purchase Order” means the document sent by Railpen to the Supplier with a request to order Goods and/or Services from the Supplier, ;

“Railpen Materials” has the meaning given in clause 3.1.7;

“Services” means the services, including the Deliverables, to be provided by the Supplier more specifically described in the Purchase Order, as applicable; and

“Supplier Content” means any software, data, text, audio, video, images or other content that the Supplier runs on the Services, causes to interface with the Services, uploads to the Services, or transfers, processes, uses or stores in connection with the Services.

3. PURCHASE ORDER

3.1. The Supplier shall ensure that the Goods and/or Services shall:

- 3.1.1. correspond with the quantity, type, sort, quality, and description set out within the Purchase Order;
- 3.1.2. meet the delivery and/or performance standards and dates for the Goods and/or Services specified on the

Purchase Order or otherwise as notified to the Supplier by Railpen;

- 3.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for the purpose held out by the Supplier or made known to the Supplier by Railpen;
 - 3.1.4. where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - 3.1.5. in respect of Goods, comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.1.6. in respect of Services, perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade and use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Contract; and
 - 3.1.7. in respect of the Services, hold all materials, equipment and tools, drawings, specifications and data supplied by Railpen to the Supplier (**“Railpen Materials”**) in safe custody, maintain Railpen Materials in good condition until returned to Railpen, and not dispose or use Railpen Materials other than in accordance with Railpen’s written instructions or authorisations.
- 3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and/or Services.
- 3.3. Railpen shall: (i) provide the Supplier with reasonable access at reasonable times to Railpen’s premises for the purpose of providing the Services; and (ii) provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 3.4. If the Goods and/or Services do not comply with clause 3.1 above, or otherwise do not comply with the description within the relevant Purchase Order, Railpen shall be entitled, without limiting its other rights and remedies, to one or more of the following rights to:
- 3.4.1. reject the Goods and/or Services (in whole or part) at the risk and own expense of the Supplier;
 - 3.4.2. require re-placement, repair or re-performance of the rejected Goods

- and/or Services, at no additional cost to Railpen, or to provide a full refund of the price of the rejected Goods and/or Services;
- 3.4.3. accept the whole or part of the Goods and/or Services subject to a reduction in the Fees, such reduction to be reasonable when taking into account the circumstances. If the Parties cannot agree a reduction within fourteen (14) days of Railpen's notice under this clause 3.4.3, Railpen shall be entitled to reject the Goods and/or Services in accordance with clause 3.4.1;
- 3.4.4. terminate the Contract with immediate effect by giving written notice to the Supplier and the Supplier shall (without affecting any of Railpen's other rights and remedies) immediately refund to Railpen all Fees previously paid to the Supplier;
- 3.4.5. arrange for a third party to supply the affected Goods and/or Services and recover from the Supplier any costs incurred by Railpen; and
- 3.4.6. claim damages for any additional costs, loss or expenses incurred by Railpen which are in any way attributable to the Supplier's failure.
- 3.5. The terms of the Contract shall extend to any substituted or remedial services and/or repair or replacement goods supplied by the Supplier.
- 3.6. Railpen's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

4. TITLE, INSPECTION AND RISK

- 4.1. Subject to clauses 3.1, 3.23.2, 5.15.1, 5.2, 5.45.4, and 5.55.5, title in the Goods shall pass to Railpen on completion of delivery.
- 4.2. In respect of Goods, Railpen shall have ten (10) Business Days' to inspect the Goods (the 'Inspection Period') and shall inform the Supplier as soon as reasonably practicable (and in any event, prior to the end of the Inspection Period) in the event that any Goods do not meet the inspection tests.
- 4.3. The Supplier shall take remedial action in the event that any Goods supplied by it do not meet the inspection test as notified by Railpen to ensure compliance at no additional cost to Railpen.
- 4.4. Risk in the Goods shall pass to Railpen after the Inspection Period.
- 4.5. The Supplier shall pass onto and be responsible for any latent defects or other issues with the Goods that are defective in anyway, including after an extended period of time beyond the Inspection Period where such Goods would reasonably be expected to remain in working order.

5. PRICE, PAYMENT AND SET OFF

- 5.1. The Fees shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services as set out in the Purchase Order and shall be inclusive of (but not limited to):
(i) the costs of packaging;
(ii) insurance; and
(iii) carriage/delivery of the Goods, or provision of the Services.
Extra charges which have not been stated within the Purchase Order shall not be effective or payable unless agreed by Railpen in writing.
- 5.2. In respect of Goods, the Supplier shall invoice Railpen on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Railpen as specified within the Purchase Order, or, as agreed between the parties: (i) in full; (ii) on a monthly basis; or (iii) on a quarterly basis.
- 5.3. The Supplier shall provide to Railpen a valid VAT invoice which must contain the Purchase Order number, and shall include such supporting information required by Railpen to verify the accuracy of the invoice.
- 5.4. Railpen shall pay the Supplier all valid and undisputed invoiced amounts within 30 days from receipt of invoice, to a bank account nominated in writing by the Supplier.
- 5.5. The Supplier shall maintain complete and accurate records of the time spent and materials used in providing the Services, and the Supplier shall allow Railpen to inspect such records at all reasonable times on request.
- 5.6. If Railpen fails to pay any undisputed amount due under the Contract (other than due to a bona fide dispute as to payment), the Supplier shall have the right to charge interest on the overdue amount at the rate of four per cent (3%) per annum above the Official Bank Rate from time to time of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.7. Railpen may, without limiting its other rights or remedies, set off any liability which it has or any amounts which it owes to the Supplier under the Contract. Any exercise by Railpen of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 5.8. In the event that a good faith dispute arises as to the amount payable under a Purchase Order, Railpen may withhold all disputed amounts for the duration of the dispute but shall pay all Fees that are not disputed. Railpen shall notify the Supplier in writing of any withheld amounts and the reasons for these.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Supplier grants to Railpen, or shall procure the direct grant to Railpen of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual, irrevocable licence to use, copy and modify the Intellectual Property Rights and all other rights in the output of the Services (including any Deliverables) to enable Railpen to freely use the Services or the Deliverables (as applicable) pursuant to the Contract.
- 6.2. If the Supplier needs to use any of the Intellectual Property Rights assigned to Railpen in the performance of the Contract and/or which belong to Railpen, Railpen grants the Supplier a non-exclusive, royalty-free, non-transferable and revocable licence to use such Intellectual Property Rights for the term of the Contract for the sole purpose of providing the Services to Railpen.
- 6.3. All Railpen Materials are the exclusive property of Railpen.

7. INDEMNITY AND INSURANCE

- 7.1. The Supplier shall indemnify Railpen against all liabilities, costs, expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation, and any interest, fines, legal and other professional fees and expenses suffered or paid by Railpen arising out of or in connection with:
- 7.1.1. any claim made against Railpen for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Railpen Materials), and
- 7.1.2. any claim made against Railpen by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 7.2. The Supplier shall ensure that the Supplier Content, and the use of anything provided under the Contract by the Supplier, its employees, agents and representatives, will not violate any applicable laws, statutes, regulations and codes from time to time in force. The Supplier acknowledges that it is solely responsible for the Supplier Content, including providing appropriate security, protection and backup of the Supplier Content.
- 7.3. The Supplier shall at all times have sufficient insurances in place with a reputable insurance company, that is relevant to the supply of the Goods and/or Services to cover the liabilities that may arise under or in connection with the Contract and shall provide written evidence of such to Railpen upon request.
- 7.4. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

- 8.1. Nothing in the Contract shall exclude or limit the liability of any Party for: (i) death and/or personal injury; (ii) fraud and/or fraudulent misrepresentation; or (iii) any other losses to the extent they are not capable of being excluded or limited by law.
- 8.2. Subject to clause 8.1, and save for in relation to Railpen's liabilities under clause 5, Railpen shall not be liable to the Supplier in contract, tort (including negligence), misrepresentation or for breach of any duty or otherwise under or in connection with the Contract for any: (i) indirect or consequential loss or damage; or (ii) any loss of profits, loss of revenue, loss of business, loss of opportunity, loss of anticipated savings or loss of goodwill (in each case, whether direct or indirect).
- 8.3. Subject to clause 8.1, the maximum aggregate liability of Railpen in contract, tort (including negligence), misrepresentation or breach of duty or otherwise under or in relation to each Purchase Order shall be limited to the Fees paid by Railpen under that Purchase Order during the six (6) months immediately preceding the occurrence of the event giving rise to the claim. In addition, Railpen's aggregate liability under or in relation to the Contract shall never exceed the sum equal to the Fees paid by Railpen under all Purchase Orders during the six (6) months immediately preceding the occurrence of the event giving rise to the claim. Nothing in this clause limits Railpen's liabilities under clause 5.
- 8.4. Each Party shall take reasonable steps to mitigate its losses incurred in respect of the Contract.

9. CONFIDENTIALITY

- 9.1. The Supplier shall treat all Confidential Information belonging to Railpen as confidential, and safeguard it accordingly. The Supplier shall not disclose any Confidential Information to any other person, other than to its own staff, employees, directors, or consultants whom need to know such Confidential Information to perform the Contract, without the prior written consent of Railpen.

10. DATA PROTECTION

- 10.1. The Contract does not involve the processing of personal data (as defined in the Data Protection Legislation). For the avoidance of doubt, each of Railpen and the Supplier shall be independent data controllers in respect of any personal data that is processed by either Party in complying with its obligations or to benefit from the rights set out within this Contract.

11. TERMINATION

- 11.1. A Party may terminate the Contract at any time by providing written notice if after the Commencement Date the other Party commits:

11.1.1. any breach of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days after receiving notice of the breach by non-defaulting Party; or

11.1.2. a material breach which cannot be rectified.

- 11.2. Railpen may terminate the Contract for convenience by giving the Supplier not less than thirty (30) days' notice in writing.

- 11.3. Upon expiry or termination of this Contract for any reason: (a) the Supplier shall immediately cease all use of, and within five (5) Business Days return to Railpen (or, at Railpen's written direction, securely destroy) all Railpen Materials and all copies or extracts, and certify such destruction in writing; (b) Railpen shall pay any Fees properly due for Deliverables supplied up to (but not after) the effective date of termination, and the Supplier shall promptly refund any Fees paid in advance to the extent they relate to Deliverables not provided as at that date; and (c) the following provisions shall survive termination or expiry: Confidentiality, Intellectual Property, Data Protection, Warranties, Indemnities and Liability, Audit/Records, Governing Law and Jurisdiction, and any other provisions which by their nature are intended to survive.

12. GENERAL

Entire Agreement

- 12.1. The Parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

Conflict

- 12.2. If there is any conflict or inconsistency between the PO Terms, the New Supplier Form and/or any Purchase Order, the terms of the New Supplier Form shall prevail, followed by the PO Terms which shall take precedence over the relevant Purchase Order.

Force Majeure

- 12.3. Neither Party shall be liable to the other as a result of 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 which by its nature could not have been foreseen by such

a party or if it could have been foreseen was unavoidable ("**Force Majeure Event**"), provided that the Party affected has used its reasonable endeavours to mitigate the effect of such circumstances and shall not be excused performance of its obligations unaffected by the Force Majeure Event.

- 12.4. The Party affected shall notify the other Party in writing as soon as reasonably practicable upon the occurrence of a Force Majeure Event and upon the cessation of the Force Majeure Event.

- 12.5. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than four (4) weeks, Railpen shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

Assignment and Subcontracting

- 12.6. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Railpen.

Notices

- 12.7. Any notice or other communication required to be given under or in connection with this Contract shall be in writing and shall be delivered to the other Party by email (but not any other form of electronic communication). All notices shall be sent to, in the case of Railpen, to the email address included on the relevant Purchase Order (or if none, then legal@railpen.com) and in the case of the Supplier, to the email address in the New Supplier Form (or, if no New Supplier Form has been agreed, the Purchase Order) and shall be deemed to have been received on the next Business Day after sending. This clause 012.7 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Waiver

- 12.8. No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under this Contract.

No Partnership

- 12.9. Nothing in the Contract, and no action taken by Railpen or the Supplier under the Contract, is intended to, or shall be deemed to, constitute a partnership, association, joint

venture or other co-operative entity of any kind between the Parties.

Third Party Rights

- 12.10. A person who is not a Party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.

Variation

- 12.11. Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both Parties.

Severance

- 12.12. If any provision in this Contract shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, the remainder of the provisions shall stand in full force and effect.

Statutory Requirements

- 12.13. The Supplier shall comply with all statutes, orders, regulations or bye laws applicable to the performance of this Contract, including the requirements under the **Bribery Act 2010**, **Modern Slavery Act 2015**, and any **anti-money laundering** legislation (including but not limited to **MLR 2017**, **POCA 2022**, and **ECCTA 2023**) and shall indemnify and hold harmless Railpen against all losses, claims, liabilities, expenses, proceedings incurred or suffered by Railpen as a result of the Supplier's non-compliance with the same.

Publicity

- 12.14. The Supplier shall not mention or use Railpen in any advertising or marketing initiative or include Railpen in its client or customer list without first obtaining the prior written consent of Railpen.

Applicability

- 12.15. These PO Terms will apply unless Railpen specifies different terms and conditions in its tender or quotation documentation or some other contract entered into by the parties. Where different terms and conditions are specified or agreed to by Railpen, those terms and conditions will override these PO Terms.

Dispute Resolution

- 12.16. The Parties shall attempt to resolve any issue of dispute arising out of or relating to the Contract or any Purchase Order through discussions between members of each Parties' senior management. If this does not resolve the dispute within ten (10) Business Days, the Parties may proceed in accordance with clause 12.17.

Governing Law and Jurisdiction

- 12.17. This Contract shall be governed by, and construed in accordance with the law of England and Wales, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.