

FRESHWAVE'S GENERAL TERMS AND CONDITIONS OF PURCHASE
Definitions

"Charges" mean the fees and charges payable by the Purchaser to the Supplier in relation to the relevant Deliverables as set out in the Contract;

"Confidential Information" means any and all Information, however it is conveyed and whether or not it is designated as "confidential", disclosed by one Party or its employees, agents, Group Companies, officers or advisers, to the other Party under or in connection with the Contract and whether disclosed before, on or after the date of any such agreement including whether in tangible or other form (a) the terms of the Contract; (b) all technical or commercial know-how, Intellectual Property Rights, pricing, specifications, reports, data, notes, documentation, drawings, computer programs, computer outputs, designs, circuit diagrams, models, patterns, samples, inventions (whether capable of being patented or not), developments, trade secrets, processes or initiatives that are of a confidential nature; (c) any information that ought to be reasonably regarded as confidential and relating to the business, affairs, customers, personnel, clients, suppliers, plans or strategy of the disclosing Party or its Group Companies; (d) the operations, product information, designs, trade secrets or software of the disclosing Party or its Group Companies; and (e) any Information disclosed by a Freshwave Customer to the Supplier;

Data Protection Legislation: means the UK General Data Protection Regulation ("UK GDPR"), the Data Protection Act 2018 and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, in each case in each jurisdiction where the Services are delivered in relation to data privacy;

"Deliverables" means such Goods and/or Services as are to be supplied to the Purchaser by the Supplier;

"Documentation" means the installation, user and maintenance guides, promotional literature and/or other documentation relating to the use, maintenance and/or operation of the Deliverables;

"Force Majeure Event" means any circumstance beyond a Party's reasonable control that hinders, delays or prevents that Party from performing any of its obligations under the Contract including nuclear accident, acts of God, fire, flood, storm, drought, natural disaster, pandemic, terrorist attack, civil commotion or armed conflict. For the avoidance of doubt, the mere shortage of labour, materials, equipment or supplies (unless caused by events or circumstances which are themselves Force Majeure Events), strikes, lock-outs or other industrial disputes involving the work force of the party so prevented or of any of its Subcontractors or suppliers will not constitute a Force Majeure Event;

"Freshwave Customer" means an existing or potential Freshwave customer;

"Freshwave Site" means all locations, sites and premises (a) to which the Deliverables are to be supplied, including Freshwave Customer sites, and/or (b) identified by Freshwave to the Supplier as a Freshwave Site;

"Goods" means such Goods as are to be supplied by the Supplier to the Purchaser.

"Group Company" means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, "subsidiary" and "holding company" having the meanings defined in the Companies Act 2006 and any Freshwave Group Company or Supplier Group Company

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, 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;

"Materials" means literary or other works of authorship including Information, specifications, software, routines, codes (including source code), interfaces, job control and other logs, databases, module, compilations of data, program listings, software tools, methodologies, tool kit, processes, scripts, manuals (including user and reference manuals), reports, plans, process and/or procedure documents, drawings, images, sound and other written documentation in any media and machine-readable text and files;

"Purchaser" and /or "Freshwave" means the Freshwave entity named as the Purchaser in the Purchase Order form, including its successors, assigns, affiliates, or licensees or, if no Purchase Order is entered into, the Freshwave entity procuring the Deliverables from the Supplier;

"Subcontractor" means any party which performs or is involved in the provision of the Deliverables or which employs or engages persons engaged in the provision of the Deliverables (including without limitation, a subcontractor of the Supplier and their subcontractors);

"Supplier Materials" means Materials in which the Intellectual Property Rights are owned by the Supplier, a Supplier Group Company, a Subcontractor or any of their third party licensors, and which are used in the provision or performance of the Deliverables, or required for the use and/or receipt of the Deliverables;

"Supplier" means the entity named as the Supplier in the Purchase Order, or if no Purchase Order is entered into, that party providing the Deliverables;

"Supplier Personnel" means any persons engaged by the Supplier or its Subcontractors in the performance of the Supplier's obligations under Contract; and

"Services" means such Services as are to be supplied by the Supplier to the Purchaser.

These Standard Terms and Conditions of Purchase are incorporated into a Purchase Order and apply between the Purchaser and the Supplier identified as such on the Purchase Order, each a **Party** and together the **Parties**.

Each Party agrees to these TERMS.

1. STRUCTURE AND SCOPE

1.1 The contract between Freshwave and the Supplier comprises the following documents (the **"Contract"**):

1.1.1 these Standard Terms and Conditions of Purchase;

1.1.2 the Purchase Order.

If there is any conflict or inconsistency in or between any parts of the Contract, the Purchase Order will take precedence over the Standard Terms and Conditions of Purchase. Freshwave specifically rejects, and Supplier disclaims, all terms and conditions in Supplier's quotation or order acknowledgement or otherwise proposed by Supplier if such terms and conditions are additional to, different from or inconsistent with this Contract.

Terms and Conditions.

1.2 Unless expressly stated otherwise, nothing in the Contract will be construed as requiring Freshwave to give the Supplier any rights of exclusivity or preferred supplier status.

2. CHARGES AND PAYMENT

2.1 The charges for Deliverables will be calculated in accordance with the Contract and confirmed in the Purchase Order. No further amounts will be payable by Freshwave for such Deliverables or the performance of the Supplier's obligations under the Contract unless agreed between the parties in writing.

2.2 Freshwave will, after the expiration of THIRTY (30) days from the date Freshwave receives each due, valid and undisputed invoice submitted in accordance with this Clause 2, instruct its bank to pay such invoice, provided always that Freshwave will make earlier payment if required to do so by any applicable law. If Freshwave disputes an invoice, it will notify the Supplier as soon as reasonably practicable in writing giving clear reasons. Freshwave may withhold from payment on the due date that part of any invoice which it disputes until the dispute is resolved.

2.3 Except as expressly stated otherwise in the Contract:

2.3.1 payment will not become due to the Supplier and the Supplier will not submit invoices for payment:

2.3.1.1 until the Supplier has fully completed its obligations under and in accordance with the Contract; or

2.3.1.2 if the Supplier is in breach of any provision of the Contract; and

2.3.2 the Supplier will submit invoices within three (3) months of the date upon which the payment they relate to becomes due to the Supplier. Freshwave will have no liability to make payments in respect of invoices submitted outside of this time period.

2.4 If Purchaser fails to make any payment under the Contract on or before the due date, the Supplier may charge interest at the rate of two (2) per cent per annum above the base rate from time to time of the Bank of England on the outstanding amount from the day after the due date until the date of payment (both before and after judgment) and it will accrue (but not compound) from day to day. The Parties agree that such interest rate is in substitution for any statutory interest that may be applicable to the Contract in question and both it and the payment period set out in Clause 2.2 are fair and reasonable

2.5 Except for the payment of the Charges, the Supplier will not charge Freshwave for any Deliverables provided under or in connection with the Contract or for any costs the Supplier may incur in fulfilling any of its obligations under the Contract and Freshwave will not pay for any costs incurred by the Supplier in remedying any failure to perform its obligations under the Contract.

2.6. If the Supplier fails to deliver the Deliverables and/or Services in accordance with Clauses 4 and 5, Freshwave shall, without limiting its other rights or remedies, have one or more of the following rights: (i) to terminate the Contract with immediate effect by giving written notice to the Supplier; (ii) to refuse to accept the Deliverables (where it is a service) and/or resulting deliverable, and/or reject any Deliverables (where they are goods) (in whole or in part) whether or not title has passed and, if Deliverables are with Freshwave, return them to Supplier at Supplier's risk and to refuse to accept any subsequent performance of any Deliverables (where they are services) and/or delivery of Deliverables (where they are goods) which the Supplier attempts to make; (iii) in relation to Deliverables which are goods, require the Supplier to repair or replace the rejected goods, or provide a full refund of the price of the rejected goods (if paid); (iv) choose to accept all or part of any non-conforming services and/or goods and shall retain the right to hold Supplier liable for any loss or damage caused by the non-conformance; (v) to recover from the Supplier any costs incurred by Freshwave in obtaining substitute goods and/or services from a third party; (vi) where Freshwave has paid in advance for services that have not been provided by the Supplier and/or goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and (vii) to claim damages for any additional costs, loss or expenses incurred by Freshwave which are in any way attributable to the Supplier's failure to meet its obligations.

3. TAXES

3.1 The Charges, unless otherwise expressly stated in the Contract, will:

3.1.1 be inclusive, where relevant, of all packing, delivery to address specified in the Contract or Freshwave's nominated agent freight agent in the country of despatch, any licence fees and all other charges associated with Deliverables; and
3.1.2 exclude any transaction tax imposed in the UK on the sale or measured by the sales price that is legally the liability of Freshwave, which Freshwave will pay in the manner prescribed by law against delivery by the Supplier of tax invoices in proper form except to the extent that a valid exemption certificate is provided by Freshwave to the Supplier, but are inclusive of all other taxes, duties, fees or surcharges of whatever nature.

3.2 The Supplier shall make all appropriate PAYE deductions and account to HMRC in a timely manner for tax and National Insurance contributions (employer and employee) and levies (including Apprenticeship Levy) from or in respect of (as applicable) the remuneration or fees it pays its Supplier Personnel (none of whom shall be employees of Freshwave or their intermediary (such as a personal service company) and will procure that Subcontractors do the same.

4. DELIVERY

4.1 The Supplier will:

4.1.1 deliver the Deliverables to Freshwave to the delivery address specified in the Contract during normal business hours and will provide all equipment and labour for their conveyance and unloading at the Delivery Address.

5. WARRANTY PERIOD

5.1 The Supplier will, at its own cost promptly remedy any Defects in the Deliverables notified by Freshwave and which become apparent by, at Freshwave's option, repairing or replacing such Defective Deliverables within one (1) year of the date of acceptance of the Deliverables or such other period specified in the Contract.

5.2 The Supplier will:

5.2.1 ensure that any remedied or replaced part of the Deliverables is compatible with all Deliverables;

5.2.2 complete the remedy or replacement to the reasonable satisfaction of Freshwave within the timescales agreed between the parties in writing;

5.2.3 ensure that Defective Deliverables are not remedied or replaced on a Freshwave Site without Freshwave's consent, unless, for operational or technical reasons they can only be removed or replaced with difficulty;

5.2.4 cause the minimum of disruption to Freshwave and/or Freshwave Customers in effecting any remedy; and

5.2.5 ensure that the time at which any remedy is to be affected is agreed with Freshwave and Freshwave may at its discretion direct the Supplier to work outside normal working hours at no cost to Freshwave.

5.3 All repaired or replacement Deliverables will benefit from the provisions of this Clause 5.

6. AUDIT RIGHTS

Freshwave shall, upon giving fourteen (14) days' written notice, be entitled to inspect, test and audit or appoint representatives (including third party representatives) to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data used in the fulfilment of this Contract.

7. AMENDMENT

No amendment to the Contract will be effective unless agreed in writing and signed by the authorised representatives of each of the Parties.

8. SUPPLIER PERSONNEL

8.1 The Supplier will ensure that all Supplier Personnel are competent and appropriately qualified to provide the Deliverables in accordance with good industry practice.

8.2 Freshwave accepts no liability for any loss or damage to the Supplier or Supplier Personnel's property that occurs whilst at a Freshwave Site.

9. WARRANTIES

9.1 The Supplier represents, warrants and undertakes that:

9.1.1 it will provide the Deliverables in compliance with the requirements of the Contract, in accordance with good industry practice and to the reasonable satisfaction of Freshwave;

9.1.2 if the Deliverables include carrying out work on Freshwave Sites or other third party sites in accordance with the site rules and reasonable instructions of Freshwave, its Customers or their agents and if that work is unsupervised by Freshwave or a Freshwave Customer, it has achieved health and safety accreditation by a member of a recognised safety scheme and it will maintain such accreditation throughout the term of the Contract. The Supplier will upon request provide written evidence to Freshwave of such health and safety accreditation;

9.1.3 it shall remove any Supplier personnel from Freshwave Sites or other third party sites at Freshwave's request, where such Supplier Personnel have not adhered to the reasonable instructions of Freshwave, its Customers or their agents; and

9.1.4 it will at all times possess all rights (including Intellectual Property Rights), licences, approvals, permits or authorisations (in each case) required to perform its obligations under the Contract including the unrestricted export of the Deliverables to Freshwave for the destination and use that Freshwave has made known to the Supplier, and export or re-export to such countries as Freshwave will have notified to the Supplier at any time before delivery to Freshwave.

10. INDEMNITIES

Supplier agrees to indemnify Freshwave and its and its Group Companies' officers, directors, employees, successors, assigns, agents and customers from and against any losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation) incurred by Freshwave as a result of or in connection with: (i) any claim made against Freshwave, its Group Companies or its customers 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 Deliverables, to the extent that the claim is attributable to the Supplier, its employees, agents or subcontractors; (ii) any claim made against Freshwave by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Deliverables, to the extent that the defects in the Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; (iii) any claim made against Freshwave by a third party arising out of or in connection with the supply of the Deliverables to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and (iv) any liability or loss incurred by Freshwave arising out of or in any way connected with the Deliverables including without limitation : (a) defective workmanship, quality of material for the Deliverables and/or (b) Supplier's failure to comply with any applicable law.

11. LIMITATION OF LIABILITY

Freshwave will not be liable to Supplier under this Contract for negligence, strict liability or other legal or equitable theory for any amounts in excess in the amount Freshwave paid to Supplier for the Deliverables in the Purchase Order in the six months preceding the event or circumstance giving rise to such liability. In no event will Freshwave be liable to Supplier for any incidental, indirect, special, consequential damages, reputational damage, or loss of profits arising out of, or in connection with this contract, whether or not purchaser was advised of the possibility of such damage. Nothing in this contract excludes or limits liability that cannot be legally excluded or limited by law.

12. FORCE MAJEURE

If a Party is prevented from performing any of its obligations by the occurrence of a Force Majeure Event, that Party ("Affected Party") may, as soon as it becomes aware of the Force Majeure Event, claim relief from liability in respect of any delay in performance or any non-performance of any such obligation to the extent that the delay or non-performance is due to a Force Majeure Event, provided that the Affected Party promptly notifies the other Party in writing, in any case no later than one (1) day, after becoming aware that such delay was likely to occur, of the

cause of the delay or non-performance and the likely duration of the delay or non-performance.

13. TERMINATION

13.1 If either Party commits a material breach of the Contract (or any part of it), the other Party will have the right at any time to terminate the whole or any part of the Contract immediately if:

13.1.1 such breach is irremediable; or

13.1.2 such breach is capable of remedy and the relevant Party has failed to remedy such breach within ten (10) business days after the issue of a written notice requiring it to do so.

13.2 The Supplier will not be entitled to terminate the whole or any part of the Contract under Clause 13.1 if at such date Freshwave is in a genuine dispute with the Supplier or such termination is due to a failure by Freshwave to pay any Charges.

13.3 Either Party will have the right at any time to terminate the Contract (or any part of it) immediately if the other Party is affected by an insolvency event.

13.4 Freshwave may at any time on written notice terminate the Contract (or any part of it) immediately if:

13.4.1 the Supplier is in persistent breach of the Contract (or any part of it) which in aggregate constitute a material breach;

13.4.2 the Supplier is prevented from performing substantially all of its obligations by a Force Majeure Event for a continuous period of more than thirty (30) days;

13.4.3 the Supplier's ownership or control is materially changed to (in Freshwave's reasonable opinion) Freshwave's detriment; or

13.4.4 an authority notifies Freshwave that it should terminate the Contract (or any part of them) or if required by Freshwave to comply with any applicable law or Freshwave is reprimanded or fined by an authority as a result of an act or omission of the Supplier or Supplier Personnel.

13.5 Freshwave may terminate the Contract (or any part of it) at any time on written notice on the date specified in such notice. In such event Freshwave will be liable to pay the Charges to the Supplier on a pro-rata basis so that Freshwave is only obliged to pay the Supplier for the Goods, software and/or Services actually delivered or provided to Freshwave in accordance with the Contract or the relevant part of it at the date of termination.

14. AMENDMENT

No amendment to the Contract will be effective unless agreed in writing and signed by the authorised representatives of each of the Parties.

15. ASSIGNMENT

Freshwave may assign this Contract and/or any Purchaser Order. The Supplier shall only assign a Purchase Order or delegate its responsibilities thereunder with the prior written consent of Freshwave.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Subject to any restrictions expressly set out in the Contract, the Supplier grants a non-exclusive, royalty-free, perpetual, irrevocable worldwide licence to Freshwave and each Freshwave Group Company, by themselves or by third parties on their behalf, free of any additional payment, to:

16.1.1 use the Deliverables without restriction;

16.1.2 use the Supplier Materials to the extent necessary to receive the benefit of the Deliverables; and

16.1.3 use the Documentation for Freshwave's use of the Deliverables.

17. DATA PROTECTION

17.1 This Clause 17 will apply only to the extent that Personal Data is provided by Freshwave to the Supplier or otherwise acquired by the Supplier in relation to the Contract. For the purposes of this Clause 17, "Freshwave" will also mean any company that is from time to time in the same group (as defined by s.474(1) Companies Act 2006) as Freshwave which provides Personal Data to the Supplier or in relation to which the Supplier acquires or generates Personal Data in relation to the Contract.

17.2 The Supplier will only Process Personal Data (limited to business contact details) of Freshwave's personnel (employees, agents and subcontractors) as Controller for purposes of contract administration and it will do so strictly in accordance with Data Protection Legislation. In the event of a Personal Data Breach, the Supplier will promptly notify Freshwave of the Personal Data Breach and provide any information Freshwave may reasonably require relating to that Personal Data Breach.

17.3 Neither Party will Process Personal Data on behalf of the other Party as Processor for the purposes of the Contract. If either Party anticipates that any change (a) to the Goods, software and/or Services; or (b) to the interpretation of the Goods, software and/or Services under the Data Protection Legislation, would require the Processing of Personal Data by the Supplier on Freshwave's behalf as

Processor, then the relevant Party will immediately notify the other in writing and the Parties will negotiate in good faith to incorporate appropriate data protection provisions into the Contract in accordance with Data Protection Legislation. No such changes will be made until appropriate data protection provisions have been agreed by the Parties.

18. CONFIDENTIALITY

18.1 Each Party will keep in strict confidence all Confidential Information disclosed to it and will:

18.1.1 only disclose Confidential Information to those of its employees, agents, Group Companies, officers, directors, advisers, insurers, Subcontractors and suppliers, who need to know it for the purpose of that Party discharging its obligations or receiving a benefit under the Contract, and will ensure that those receiving Confidential Information under this Clause 18.1 comply with the obligations set out in this Clause 18 as though they were a party to the Contract;

18.1.2 only disclose Confidential Information as required by any applicable law, any authority or by a court of competent jurisdiction; or

18.1.3 not use or exploit the Confidential Information in any way except as necessary for the purpose of that Party discharging its obligations or receiving a benefit under the Contract.

18.2 Clause 18.1 will not apply to Confidential Information that:

18.2.1 is or becomes available to the public other than as a result of a breach of the Contract;

18.2.2 was lawfully available to a Party on a non-confidential basis prior to disclosure by the disclosing Party;

18.2.3 the Parties agree in writing is not Confidential Information; or

18.2.4 was developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

18.3 Upon written request from a Party, the other Party will return or destroy any Confidential Information received from the requesting Party within a reasonable time period and provide written confirmation on request by the requesting party.

18.4 The Parties agree that if either of them breaches this Clause 18, damages may not be an adequate remedy for the disclosing party and it will have the right to apply for injunctive relief or specific performance of the recipient's obligations.

19. TRANSFER OF UNDERTAKINGS

The Supplier shall on demand indemnify Freshwave from and against all losses incurred by Freshwave arising out of or in connection with this Contract or its termination, from any transfer or deemed or alleged transfer by operation of law of any of the Supplier's employees or any temporary worker in respect of Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended from time to time).

20. GENERAL

20.1 Except as otherwise specifically provided in the Contract, no failure to exercise, or delay in exercising, any right or privilege will operate as a waiver of any right or privilege.

20.2 If any court or competent authority finds that any provision (or part of any provision) of the Contract is illegal, invalid or unenforceable, that provision or part provision, to the extent required, will be deemed to be deleted. The legality, validity or enforceability of any other provision of the Contract will not be affected.

20.3 The provisions of Clauses 2 (Charges and Payment), 3 (Taxes), 6 (Audit Rights), 10 (Indemnities), 12 (Force Majeure 14 (Amendment), to), and 15 (Assignment) will survive the termination or expiry of the Contract.

20.4 The Contract constitutes the whole agreement between the Parties with respect to the subject matter and supersedes any and all prior oral or written understandings, arrangements, negotiations, communications and/or representations between them. Nothing in the Contract will operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.

20.5 The Contract does not create any right or benefit enforceable by any person not a Party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).

20.6 The Contract is governed by and construed in accordance with the laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or their subject matter or formation (including noncontractual disputes or claims).