



Positive innovation

# **Talan UK & Ireland Limited Purchase Order Terms**

# 1. Definitions

A. In this Purchase Order (as defined below):

- I. **"Buyer"** means the Talan UK & Ireland Limited entity identified in the Purchase Order;
- II. **"Confidential Information"** means any and all the confidential information (in whatever form communicated or maintained, whether orally, electronically or documentary, computer storage or otherwise) in any form disclosed or made available by Buyer to Supplier;
- III. **"Data Incident"** means any event that results, or may result, in unauthorised access to Personal Data held by the affected Party, and/or actual or potential loss and/or alteration and/or destruction of Personal Data in breach of the Purchase Order, including any personal data breach or potential personal data breach;
- IV. **"Data Protection Legislation"** means any laws applicable in the jurisdiction of the Buyer in relation to the processing of personal data under the Purchase Order; **"Delivery Date"** means the expected date of delivery of the Goods and/or Services where this is specified in the Purchase Order;
- V. **"Executed Agreement"** means a pre-existing, executed agreement between Buyer and Supplier;
- VI. **"Force Majeure Event"** means and is limited to any of the following events or circumstances but only to the extent that the event or circumstances is beyond the reasonable control of the person seeking to claim that the event or circumstances amounts to a Force Majeure Event:
  1. war or terrorist activity; or
  2. civil commotion; or
  3. action taken by the Government; or
  4. nuclear accident or act of God (including flood or lightning); or
  5. fire or serious explosion (other than where caused by the negligence or wilful default of the person seeking to claim a Force Majeure Event).
- VII. **"Goods"** means the goods, products, (raw) materials, equipment, design, software, rental properties and/or related documentation to be supplied by Supplier under this Purchase Order;
- VIII. **"Intellectual Property Rights"** means all patents, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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;
- IX. **"Non-complying Goods"** and **"Non-complying Services"** means any Goods or Services which are not in conformity with this Purchase Order or delivered after the Delivery Date;
- X. **"Party"** means the Buyer or the Supplier;
- XI. **"Protective Measures"** means any and all appropriate technical and organisational measures as are implemented and maintained to:
  1. ensure that personal data are processed in a secure manner; and
  2. protect personal data from unauthorised use, alteration, access or disclosure, and loss, theft, and damage.
- XII. **"Purchase Order"** has the meaning provided in Clause 2(a);
- XIII. **"Services"** means the services or related deliverables under this Purchase Order or the services related to the supply of Goods;
- XIV. **"Specified Purposes"** means processing limited to the extent required for the provision of the Goods or Services;
- XV. **"Sub-Processor"** means any person engaged by Supplier as a further processor in relation to Buyer Personal Data that is processed under the Purchase Order.
- XVI. **"Supplier"** means the entity identified in this Purchase Order that sells the Goods or provides the Services; and
- XVII. **"Working Days"** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

B. In this Purchase Order, unless the context requires otherwise:

- I. ***“controller”, “data subject”, “personal data”, “personal data breach”, “processor”, “recipient”*** and ***“supervisory authority”*** shall have the meaning given to those terms in the Data Protection Legislation; and
- II. ***“processing”*** shall have the meaning given to that term in the Data Protection Legislation (and ***“process”*** and ***“processed”*** shall be construed accordingly).

## 2. General

- A. The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the Buyer and the Supplier.
- B. Buyer's submission of this Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of this Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of this Purchase Order, even if Supplier purports to condition its acceptance of this Purchase Order on Buyer's agreement to such different or additional terms.
- C. Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier's acceptance of these terms and conditions.
- D. Notwithstanding the foregoing, if an Executed Agreement covering procurement of the Goods and/or Services described in this Purchase Order exists between Supplier and Buyer, the terms of such Executed Agreement shall prevail over any inconsistent terms herein.

### 3. Charges and Payment

- A. The price for the Goods and/or Services is the price set out in this Purchase Order. Unless expressly stated to the contrary, prices are fixed and (i) include postage, packaging and insurance of the Goods and/or Services, and (ii) exclude VAT, which shall be paid by Buyer at the rate and in the manner for the time being prescribed by law.
- B. In respect of Goods, the Supplier will invoice Buyer on or at any time after completion of delivery. In respect of Services, the Supplier will invoice Buyer in accordance with the frequency agreed between the Parties.
- C. Buyer shall only process invoices that comply with Buyer's invoice instructions. Non-compliant invoices will be returned to Supplier and may lead to a delay in payment. Buyer shall not be liable to Supplier for any interest or other charges levied due to such a delay.
- D. Buyer may exercise any right of set off, abatement, counterclaim, retention, deduction or any other withholding against amounts invoiced to it (including where invoices have been issued late or have been subsequently amended to correct errors) by the Supplier.
- E. If Buyer disputes any invoice or any part thereof payment on that part of the invoice in dispute shall be delayed until such time as the dispute is resolved. Supplier will have no right to postpone or suspend its obligations in the event of a dispute.
- F. Buyer will pay Supplier's invoice within thirty (30) days of invoice receipt.

## 4. Assignment and Sub-Contracting

- A. The Contractor will not assign, transfer, sub-contract or deal in any other manner with all or any of its rights or obligations under this Purchase Order without Buyer's prior written consent.

## 5. Delivery and Inspection

- A. Supplier will give Buyer prompt notice of any prospective failure to deliver Goods or provide Services on the Delivery Date. Buyer's acceptance of Supplier's notice will not constitute Buyer's waiver of any of Supplier's obligations.
- B. The Buyer is entitled to reject any Goods or Services delivered after the Delivery Date.
- C. Payment for the Goods or Services shall not constitute acceptance. All Goods and Services are received subject to Buyer's inspection and acceptance.
- D. Non-complying Goods and Non-complying Services may be returned at Buyer's option at Supplier's risk and expense.
- E. Buyer may procure similar Goods or Services in substitution for the Non-complying Goods or Services and Supplier will refund the cost of the Non-complying Goods or Non-complying Services and reimburse Buyer upon demand for all additional costs incurred by Buyer.
- F. The risk of loss or damage and title for Goods will pass upon Buyer's acceptance.

## 6. Force Majeure

- A. Neither the Supplier nor Buyer will be liable for any expense, loss or damage resulting from delay or prevention of performance of the Agreement that is caused by a Force Majeure Event.
- B. If either Party is prevented or delayed in the performance of any of its obligations under this Purchase Order by a Force Majeure Event, that Party will notify the other Party specifying the nature and extent of the circumstances giving rise to that Force Majeure Event.
- C. If the prevention or delay persists for more than seven (7) days, either Party will be entitled to terminate this Purchase Order with immediate effect.



## 7. Warranties by the Supplier

A. The Supplier will ensure that the Goods furnished or Services rendered:

- I. Correspond with the description and quantity set out in this Purchase Order;
- II. Conform to any specifications provided by or agreed with Buyer under this Purchase Order;
- III. Are fit for the Buyer's intended purpose to the extent that such purpose is known or should reasonably be known to the Supplier;
- IV. Are provided in a timely manner with all reasonable skill, care and diligence and in accordance with sound professional standards to the level generally followed by recognised suppliers providing similar services;
- V. Are new and contain first-quality components and parts;
- VI. Are free from defects in design and material and workmanship under normal use and will remain so for 12 months after delivery;
- VII. Do not infringe third party Intellectual Property Rights;
- VIII. Are free and clear of all liens, encumbrances, restrictions, and claims against title or ownership; and
- IX. Comply with all applicable laws, statutes and regulations.

## 8. CONFIDENTIALITY

- A. Supplier hereby agrees and undertakes that, in relation to Confidential Information disclosed to it by the Buyer, it will keep the Confidential Information which has been disclosed (whether orally or in writing) strictly confidential and not disclose Confidential Information to any third p.3arty without Buyer's prior written consent.
- B. Upon Buyer's request, and in any event on completion, termination or other expiry of the Purchase Order, the Confidential Information and any records or copies of the same in whatever form, must be destroyed or returned promptly to the Buyer.
- C. The provisions of this Clause 8 shall survive for two (2) years following termination or expiry of the Purchase Order for any cause.

## 9. TERMINATION

- A. In addition to Clause 6.c, if the Supplier fails to meet its obligations (including its warranty obligations or obligation to deliver by the Delivery Date), or Buyer reasonably believes that Supplier will not meet such obligations (including the event that Supplier becomes insolvent or otherwise unable to pay its debts or is declared bankrupt or ceases doing business as going concern or commences liquidation), then Buyer, without prejudice to any other rights or remedies it may have under this Purchase Order or at law, will have the right to terminate this Purchase Order upon written notice.

# 10. LIABILITY, INDEMNIFICATION AND INSURANCE

- A. Subject to any express contractual terms and conditions of this Purchase Order, in no event shall either Party be liable to the other Party for any indirect or consequential damages arising out of, or in connection with, this Purchase Order however caused.
- B. Nothing in this Purchase Order shall limit or exclude a Party's liability for
  - I. death or personal injury caused by its negligence; or
  - II. fraud or fraudulent misrepresentation; or
  - III. any other liability which cannot be limited or excluded by applicable law.
- C. Subject to Clause 10.a and Clause 10.b, Buyer's total liability to the Supplier, in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Purchase Order, shall be limited to the price paid or payable under this Purchase Order.
- D. The Supplier hereby indemnifies, and shall keep and hold Buyer harmless from and in respect of all and any direct, indirect or consequential liabilities, losses, damages, claims, costs or expenses which are awarded against, incurred or paid by Buyer as a result of or in connection with:
  - I. any alleged or actual breach (whether or not under the laws applicable in the jurisdiction of the Buyer) of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods or Services;
  - II. any claim made against Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Goods or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this agreement by the Supplier; and
  - III. any breach by the Supplier of its obligations under this Purchase Order, which causes Buyer to breach any Data Protection Legislation.
- E. The Supplier shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks and liabilities which may be incurred by the Supplier and its directors, officers, employees, sub-contractors, agents, or other persons in relation to performance of the Supplier's obligations under this Purchase Order. Such insurance shall include as a minimum adequate cover for professional indemnity, public liability and employee liability. The Contractor shall, on Buyer's request, produce insurance certificates giving details of cover and the receipt for the current year's premium.

# 11. DATA PROTECTION

- A. Supplier will comply with all relevant Data Protection Legislation in relation to all Personal Data processed under the Purchase Order and Supplier shall, and the Supplier shall procure that no Sub-Processor shall, by act or omission, put the Buyer in breach of the Data Protection Legislation.
- B. The Parties acknowledge and agree that:
  - I. for the purposes of Data Protection Legislation, Buyer is the controller and the Supplier is the processor of any Buyer Personal Data processed under the Purchase Order;
  - II. Supplier shall only process the Buyer's Personal Data in accordance with written instructions received from Buyer and only in such a manner as is required for the Specified Purposes; and
  - III. each shall immediately inform the other if, in its opinion, any instruction made under the Purchase Order infringes any part of the Data Protection Legislation and the Parties shall review such instruction accordingly.
- C. The Supplier shall in relation to the Buyer Personal Data:
  - I. ensure that it has in place Protective Measures to protect against a Data Incident, having taken account of the nature of the data to be protected, and harm to data subjects that might result from a Data Incident;
  - II. maintain complete and accurate records and information to demonstrate its compliance with relevant provisions of the Data Protection Legislation, including without limit in relation to Protective Measures;
  - III. regularly test the effectiveness of the Protective Measures and the Supplier's compliance with its obligations under the Data Protection Legislation and shall maintain records of such testing;
  - IV. upon request make copies of the records referenced in Clause 11.c.i and Clause 11.c.iii available to Buyer in order to confirm its compliance with the Data Protection Legislation as it applies to matters under the Purchase Order;
  - V. unless required to do so by any Law, regulation, or order applicable to the jurisdiction where such processing is undertaken, only process Buyer's Personal Data in accordance with the Specified Purposes;
  - VI. promptly notify Buyer of any processing to be undertaken under applicable Law before performing such processing, unless such Law prohibits the same;
  - VII. ensure that all of its directors, employees, agents or sub-Contractors who have access to or process Buyer's Personal Data:
    - 1. are legally and contractually obliged to keep personal data confidential; and only process the Personal Data in accordance with the Purchase Order;
    - 2. are aware of and comply with the Supplier's duties under this Clause 11; and
    - 3. have undergone adequate training in the use, care, protection and handling of Personal Data;
  - VIII. notify Buyer within two hours of becoming aware of a Data Incident;
  - IX. notify Buyer as soon as is practicable if it receives any request, complaint or communication relating to either Party's obligations under the Data Protection Legislation, including without limitation in relation to a data subjects rights; and
  - X. assist Buyer in relation to their obligations under Data Protection Legislation, including by promptly providing such assistance as is reasonably requested by Buyer to enable its obligations in relation to a data subjects rights within the relevant timescales as set out in the Data Protection Legislation.
- D. In respect of Buyer's Personal Data processed by it under the Purchase Order, the Supplier shall:
  - I. prior to the commencement of the processing of the Personal Data, and on a continuing basis, take all reasonable technical and organisational measures to keep all Personal Data confidential and secure and to protect Personal Data against accidental loss or unlawful destruction, alteration, disclosure or access;
  - II. provide such information and assistance and, on prior notice of no less than three (3) Working Days and at its own cost, allow for and contribute to audits (including inspections) conducted by Buyer or an auditor mandated by Buyer to enable Buyer to satisfy itself of the Supplier's compliance with this Purchase Order and the Data Protection Legislation;

- III. notify Buyer promptly (and in any event within two (2) Working Days) if it receives:
    - 1. a request from a data subject to have access to that individual's personal data; or
    - 2. a complaint or request relating to Buyer's obligations and/or the rights of a data subject under Data Protection Legislation; or
    - 3. any other communication relating directly or indirectly to the processing of any Buyer Personal Data in connection with the Purchase Order;
  - IV. at its own cost, promptly provide such information and assistance as is reasonably required by Buyer to respond to and resolve any request, complaint or other communication received in relation to the Buyer's Personal Data within any timeframes imposed by applicable Data Protection Legislation;
  - V. notify Buyer promptly (and in any event within two (2) Working Days) of any unauthorised use or disclosure of Buyer Personal Data of which the Supplier becomes aware and shall promptly provide such information and assistance as is reasonably required by Buyer to respond to and terminate such unauthorised use and/or disclosure;
  - VI. to the extent permitted by Law, on termination or expiry of the Purchase Order for any cause, and at any time on the request of Buyer, either return the Buyer Personal Data in the format requested by Buyer (and destroy all remaining copies), or destroy all Buyer Personal Data (including all copies of it), in either case promptly and confirm in writing that it has complied with this obligation;
  - VII. not transfer any Personal Data outside of the European Economic Area unless it has sought (and received) prior written consent from Buyer; and complied with its obligations under the Data Protection Legislation; and
  - VIII. not seek to appoint any Sub-Processor in relation to the Buyer Personal Data without first obtaining the permission of Buyer in writing.
- E. Where Buyer gives consent pursuant to Clause 11.d.viii the Supplier shall
- I. Ensure that each approved Sub-Processor enters into a written agreement undertaking to the Supplier in terms no less onerous than the undertakings contemplated to be given by the Supplier to Buyer and described in the Purchase Order in relation to the processing of the Buyer Personal Data; and
  - II. On demand from Buyer provide evidence that the terms agreed with any such Sub- Processor are compliant with the requirements of Clause 11.e.i.
- F. If any Buyer Personal Data is lost or corrupted as a result of any act or omission of the Supplier or any Sub-Processor, the Supplier shall restore Buyer Personal Data at its own expense.
- G. Supplier agrees and acknowledges that the provisions of this Clause 11 are in addition to, and do not relieve, remove, or replace Supplier's obligations under the Data Protection Legislation and that it shall at all times remain liable for the acts or omissions of their Staff in relation to compliance with the Data Protection Legislation.

## 12.NO WAIVER

- A. No failure or delay by either Party in exercising any right power or privilege to which it is entitled under this Purchase Order shall operate as a waiver nor shall any single or partial exercise of any such right power or privilege preclude any other or further exercise.

## 13. SEVERANCE

- A. If any provision of this Purchase Order shall be found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of this Purchase Order which shall remain in full force and effect.



## 14.NO AGENCY OR PARTNERSHIP

- A. Nothing in this Purchase Order shall constitute either Party as an employee, worker, agent or partner of the other.

## 15. APPLICABLE LAW AND JURISDICTION

- A. The terms of this Purchase Order shall be governed by and construed in accordance with the law of the jurisdiction of the Buyer, excluding conflict of law rules and choice of law principles that provide otherwise. The Parties irrevocably submit to the exclusive jurisdiction of the courts in the jurisdiction of the Buyer to resolve any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Purchase Order.

## 16.VARIATION

- A. No variation to this Purchase Order shall be valid unless it is in writing and signed for and on behalf of each of the Parties.

## 17. THIRD PARTY RIGHTS

- A. This Purchase Order is not intended to be for the benefit of and shall not be enforceable by any person (other than by a Party) under any applicable law, including but not limited to the UK Contracts (Rights of Third Parties) Act 1999.



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