

Purchase Order Terms and Conditions for supply of Goods and Services

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 DEFINITIONS:

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

Conditions: these terms and conditions as amended from time to time in accordance with [Clause 14.7](#).

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the legal entity within the Arriva group referred to in the Order.

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: the deliverables set out in the Order or as otherwise agreed between the Supplier and the Customer.

GDPR: General Data Protection Regulation ((EU) 2016/679).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, copyright, trademarks and service marks, business names and domain names, goodwill, rights in designs, 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 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.

Mandatory Policies: the Customer's policies and codes of conduct (including the Arriva Code of Conduct for Business Partners and Responsible Procurement Policy) available to the Supplier on request.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, to be supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services agreed in writing between the Customer and Supplier.

Supplier: means the legal entity specified in the Order who shall provide the Goods and/or Services to the Customer

2. BASIS OF CONTRACT

2.1 Where the Customer and the Supplier have entered into a written agreement for the purchase of the Goods and/or Suppliers, or where the Customer is entitled to purchase the Goods and Services under a framework agreement with the Supplier (a **Prior Agreement**), these Conditions shall only apply to the extent they do not conflict with the Prior Agreement, and in the event of a conflict, the terms of the Prior Agreement shall prevail.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of: **(a)** the Supplier issuing written acceptance of the Order; or **(b)** any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 Except as set out in [Clause 2.1](#), these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. SUPPLY AND DELIVERY OF GOODS

3.1 The Supplier shall ensure that the Goods shall: **(a)** correspond with their description and any applicable Goods Specification; **(b)** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication; **(c)** where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery or as set out in the Goods Specification; and **(d)** comply with all applicable statutory and regulatory requirements relating to the Goods.

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.

3.3 The Supplier shall ensure that: **(a)** the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and **(b)** each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods and special storage instructions (if any).

3.4 The Supplier shall deliver the Goods: **(a)** on the date specified in the Order or, if no such date is specified, then as soon as possible and, in any event, by any date made known to the Supplier by the Customer prior to the Commencement Date or otherwise within 14 days of the date of the Order; **(b)** to the Customer's premises set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and **(c)** during the Customer's normal hours of business on a Business Day, or as instructed by

the Customer.

3.5 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.6 Title and risk in the Goods shall pass to the Customer on completion of delivery.

4. SUPPLY OF SERVICES

4.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates and in providing the Services, the Supplier shall: **(a)** perform the Services with reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; **(b)** ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier; **(c)** obtain and at all times maintain all licences and consents which may be required for the provision of the Services; **(d)** comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, including where applicable, the Data Protection Legislation; **(e)** comply with the Mandatory Policies; **(f)** observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; **(g)** not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and **(h)** comply with any additional obligations as set out in the Service Specification.

5.3 The Customer shall: **(a)** provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and **(b)** provide such necessary information for the provision of the Services as the Supplier may reasonably request.

5. REMEDIES

5.1 Without prejudice to any other terms under these Conditions, if the Supplier fails to deliver the Goods and/or perform the Services by the date set out in the Order or as otherwise notified to the Supplier or determined under these Conditions, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights: **(a)** to terminate the Contract with immediate effect by giving written notice to the Supplier; **(b)** to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; **(c)** to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and **(e)** to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

5.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in [Clause 3](#), then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods: **(a)** to terminate the Contract with immediate effect by giving written notice to the Supplier; **(b)** to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense; **(c)** to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); **(d)** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; and **(e)** to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with [Clause 3](#).

5.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

5.4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

6. CHARGES AND PAYMENT

6.1 The price for Goods: **(a)** shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery or as otherwise agreed with the Customer; and **(b)** shall be inclusive of VAT; and **(c)** all costs and charges of packaging, insurance, transport of the Goods.

6.2 The charges for the Services shall be set out in the Order or as otherwise agreed with the Customer, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services (and include VAT). Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

6.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts net monthly from the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

6.5 Subject to [clause 6.6](#) and [6.7](#), if the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Supplier may claim interest on

undisputed overdue sums from the due date until payment of the overdue sum. Interest under this [Clause 6.5](#) will accrue each day at 2% a year above the Bank of England's base rate from time to time.

6.6 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract.

6.7 The Customer shall be entitled to withhold payment of any invoiced amount without liability or interest accruing, if that amount is the subject of a genuine dispute between the parties until such time as the resolution in question is resolved as between the parties.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty- free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

7.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer which the Customer owns (**Customer Materials**) to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8. INDEMNITY

8.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with: **(a)** any claim made against the Customer 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 Customer Materials); **(b)** any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods or the Deliverables; and **(c)** any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services.

8.2 This [Clause 8](#) shall survive termination of the Contract.

9. INSURANCE

During the term of the Contract the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract to a minimum amount of cover equivalent to £10,000,000 (ten million pounds) for each and every incident, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by [Clause 10.2](#).

10.2 Each party may disclose the other party's confidential information: **(a)** to its employees, officers, representatives, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract; **(b)** entities within its corporate group; and **(c)** as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority and/or as required by any public body with which the Customer has a contractual relationship and under that contractual relationship disclosure is required.

10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11. DATA PROTECTION LEGISLATION

The parties acknowledge and agree that the Supplier shall not process (and is not authorised by the Customer to process) any personal data under or in connection with this Contract. In the event that the Supplier or Customer wish the Supplier to process any personal data, the parties shall discuss in good faith the necessary contractual terms upon which processing may be permitted which shall comply, as a minimum, with the requirements of the means the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, as amended from time to time, (the "GDPR") with effect from 25 May 2018, the date upon which the GDPR applies. The terms "personal data" and "process(ing)" where used in this clause 11 shall have the meanings given to such terms in the GDPR.

12. TERMINATION

12.1 On termination or expiry of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry.

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12.4 Without affecting any other right or remedy available to it, the Customer may terminate the Contract by giving the Supplier not less than 5 (five) days' written notice.

12.5 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if: **(a)** the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 (ten) days after receipt of notice in writing to do so; **(b)** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) or any analogous procedure; or **(c)** the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (which shall not include, in the case of the Supplier, any industrial action by its employees and/or failures and delays within that party's supply chain). If the period of delay or non-performance continues for 2 (two) weeks, the party not affected may terminate this agreement by giving 7 (seven) days' written notice to the affected party.

14. GENERAL

14.1 Assignment and other dealings (a) The Customer may at any time assign any or all of its rights and obligations under the Contract. **(b)** The Supplier shall not assign, or subcontract any of its rights and obligations under the Contract without the prior written consent of the Customer. **14.2 Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business; or sent by email to the address specified in the Order. **14.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract. **14.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. **14.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. **14.6 Entire agreement.** Except as set out in [Clause 2.1](#) the Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. **14.7 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives). **14.8 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) 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. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.