

TERMS FOR SUPPLY OF SERVICES

1. INTERPRETATION

Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in Clause 16 (Definitions), and if there is a conflict or inconsistency between any provision contained in these terms and any provision contained in an Order, except where provided to the contrary in the latter, the Order prevails to the extent of the conflict or inconsistency.

2. ORDERS

2.1 Marketing Material

2.1.1 Any Price, samples, drawings, descriptions, or advertising of or relating to services available from the Seller issued or published by the Seller, including those contained in catalogues, brochures or on a website (all or any of these forms of communication being "Marketing Material"), are issued or published in order to give an idea of the services described in them and the associated Price, and they shall not form part of the Agreement or any other contract to supply the Services between the Seller and the Customer, or any collateral contract.

2.1.2 The Seller is not bound by, and hereby excludes liability for, any error in or omission from (other than a fraudulent one) Marketing Material which is manifest or which ought reasonably to be considered apparent to the Customer, and the Customer undertakes not to rely on any such error or omission, or to enforce rights or bring any claim against the Seller on the basis of the Marketing Material to the extent of such error or omission.

2.1.3 The Seller's employees or agents are not authorised to make any statement or other representation concerning the Services unless confirmed by the Seller in writing, and the Customer undertakes not to rely on, and hereby waives any claim for breach of, any unconfirmed statement or representation which is not made fraudulently.

2.2 Rejection of Customer terms

The Seller is prepared to supply services or to enter into an agreement to supply services on these terms only, to the exclusion of any terms which the Customer purports to apply, whether in an Order or otherwise, which are hereby rejected or shall (as appropriate) be excluded from the Agreement.

2.3 Proposals and Quotations

2.3.1 A proposal, quotation or similar communication by the Seller is not an offer to supply services, unless it is in writing, expressly described as an offer and signed by or on behalf of the Seller.

2.3.2 A proposal, quotation or similar communication is valid only for the period stated in it, and in the absence of any period stated, for ninety (90) days and is subject to withdrawal or revision by the Seller at any time.

2.4 **Ordering procedure**

2.4.1 To order services from the Seller, the Customer shall complete and send to the Seller an Order, which constitutes an offer from the Customer on the terms of the draft Order, and remains open for acceptance by the Seller for a period of ninety (90) days from the date of sending, or such other period as the parties agree in writing (the "Offer Period"); the Order shall be in the form the Seller requires.

2.4.2 The Order shall be sent by post or e-mail to the Seller's address as detailed in the Order, referencing the appropriate Order reference and version number.

2.4.3 During the Offer Period, the Customer is not entitled to amend or cancel the offer. If the Customer wishes to discuss amendments to an offer, the Customer shall request to open negotiations with the Seller for the creation of a revised offer proposal by the Seller which shall be deemed a new Order.

2.4.4 Where the Seller accepts the Customer's offer, it shall notify the Customer within the Offer Period, or such other period as the parties agree in writing, and in default of the Seller doing so within that period, the Order is hereby rejected and the Seller shall have no liability for Losses arising from such unfulfilled Order.

2.5 **Nature of Orders**

Each Order gives rise to an Agreement, and each Agreement is separate from each other Agreement, except to the extent provided in the Agreement in question.

3. **SCOPE AND DURATION**

3.1 **Supply of Services**

Subject to the Agreement, the Seller shall supply, and the Customer shall accept and pay for, the Services.

3.2 **Time for performance**

3.2.1 Unless otherwise stated in the Order, all dates or other times for delivery of the Services stated in the Order are estimates only, except the Seller shall use its reasonable endeavours to perform the Services no later than the date or time stated, and in default of a date or time stated in the Order, the Services shall be delivered within a reasonable time after the date of the Order, time for which is not of the essence.

3.2.2 The Customer may not postpone performance of the Services except with the prior consent in writing of the Seller.

3.3 **Manner of performance**

The Seller is entitled to determine the manner in which the Services are performed.

3.4 **Relief events**

3.4.1 The Seller is discharged from performing the Agreement where, to the extent, and for so long as the following circumstances affect performance:

- (a) Clause 13 (Force Majeure) applies;
- (b) the Seller has been provided with inaccurate, incomplete or misleading information; or
- (c) the Customer is in breach of the Agreement.

3.4.2 Where Clause 3.4.1 applies, and subject to Clause 13 (Force Majeure) in relation to Force Majeure Events:

- (a) the Seller shall notify the Customer as soon as reasonably practicable, and shall use its reasonable endeavours to continue to perform the Agreement but shall not be liable for any failure to do so (including any delayed or defective performance); and
- (b) the Customer shall reimburse the Seller on demand in respect of all incremental costs incurred by the Seller in performing its obligations under the Agreement as a result.

3.5 **Commencement and duration**

The Agreement begins on the date of the Order and, subject to earlier termination in accordance with its terms, shall continue until discharged by its performance.

4. **PRICE**

4.1 **Price**

4.1.1 The Price shall be agreed between the parties on a case by case basis.

4.1.2 The Price is exclusive of value added tax, which shall be added to the Price, and paid by the Customer in accordance with Clause 4.2 (Payment).

4.2 **Payment**

4.2.1 The Customer shall pay the Price in accordance with the Order, without set-off or counterclaim in respect of any liability of the Seller, within thirty (30) days of the end of the calendar month which follows the month during which the relevant invoice is issued.

4.2.2 Any amount due to the Seller is not to be taken to have been made or received for the purposes of the Agreement unless and until the amount is received by the Seller in cash or cleared funds.

4.2.3 If the Customer fails to pay any sum due and payable under the Agreement by the due date, the Seller may suspend performance of the Services or cancel any unperformed portion of such Order.

4.3 **Default interest**

4.3.1 If the Customer fails to pay any sum due and payable under the Agreement by the due date, interest in accordance with Clause 4.3.2 from time to time shall accrue on the unpaid amount from the due date to the date of actual payment (after as well as before judgment); interest shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed, shall accrue from day-to-day, and shall be compounded each month determined from the due date.

4.3.2 For the purposes of Clause 4.3.1, the interest rate shall be five (5) per cent above the base rate of the Bank of England from time to time.

4.4 **Suspension**

If the Customer fails to pay the Price by the due date, the Seller may suspend the Services until payment, plus any interest charged by the Seller in addition, is made or received.

5. **CUSTOMER'S SUPPORT**

5.1 **General**

The Customer shall:

- 5.1.1 procure that contractors engaged by the Customer co-operate with the Seller as required in connection with the Services;
- 5.1.2 provide access to, or the use of, all equipment, systems and other assets required by the Seller to perform the Services, and all information requested by the Seller in connection with the Services as soon as reasonably practicable after receiving the request;
- 5.1.3 notify the Seller of anything in connection with the Services of which the Customer is aware or ought reasonably to be aware, which is relevant to the performance of the Services, including circumstances:
 - (a) creating a reasonable risk of delay or material extra work in connection with the Services; or
 - (b) prevents or hinders or which may reasonably be expected to prevent or hinder the Seller from complying with any provision of the Agreement, in each case giving the reasons in reasonable detail;
- 5.1.4 make available sufficient working space, facilities and use of services the Seller may require (acting reasonably); and
- 5.1.5 afford such occasional typing, photocopying and use of telephone or facsimile machines as reasonably required.

5.2 **Access to premises**

The Customer shall, and shall procure that any third party shall, afford to the Seller, its representatives and sub-contractors with access to the premises of the Customer or the third party (as appropriate) that the Seller may reasonably require to perform the Services.

5.3 **Third party consents**

The Customer shall procure all permissions, licences and other authorisations from third parties, including competent authorities, which are or may reasonably be expected to be required for the purpose of or in connection with the performance of the Services, and shall indemnify the Seller and keep the Seller indemnified on an after tax basis in respect of all Loss incurred or sustained by the Seller arising from or on connection with a breach of this Clause 5.3 (Third party consents) by the Customer.

6. **SELLER'S REMEDIES**

6.1 **Set-off**

- 6.1.1 The Seller is entitled from time to time to set-off against any amount:

- (a) held by the Seller and paid by or on behalf of the Customer, whether under the Agreement or otherwise, including the Price; or
- (b) due to the Customer from the Seller, whether in respect of any liability of the Seller under or in connection with the Agreement or otherwise,

any Losses incurred or sustained by the Seller by reason of the breach of the Agreement by the Customer, or the negligence, fraud or wilful misconduct of the Customer.

- 6.1.2 Where the Seller holds amounts paid by or on behalf of the Customer for more than one purpose, the Seller is entitled to elect which amounts it exercises its rights of set-off against and the Order in which it does so.
- 6.1.3 The Seller shall account to the Customer for the balance (if any) of the Price or other amounts paid by the Customer after exercising the Seller's rights of set-off under Clause 6.1.1.

7. **INDEMNITY**

7.1 The Customer shall indemnify the Seller against all liabilities or Losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller:-

7.1.1 arising out of or in connection with any third party claim made against the Seller for actual or alleged infringement of a third party's intellectual property in connection with the Services to the extent that the Services are to be performed in accordance with the Specification supplied by the Customer or otherwise; and

7.1.2 towards the Customer's property, employees, agents or contractors.

8. **TERMINATION**

8.1 **Termination for breach**

8.1.1 The Seller may by giving notice to the Customer terminate any Agreement formed in accordance with these terms as from the date of expiry of the notice if the Customer commits a breach of the Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) Business Days after the Seller has given notice containing details of the breach, and requiring the breach to be remedied.

8.2 **Termination for Insolvency Event**

The Seller may at any time, by notice to the Customer, terminate any Agreement formed in accordance with these terms as from the date of expiry of the notice if an Insolvency Event occurs in relation to the Customer.

9. **CONSEQUENCES OF TERMINATION**

9.1 **Accrued rights and survival**

Termination of the Agreement does not affect:

9.1.1 the rights or liabilities of the parties which have accrued on or before termination;

- 9.1.2 the continuance in force of Clauses 6 (Seller's Remedies), 7 (Indemnity, 11 (Liability) and 12 (Confidentiality), which survive termination of the Agreement; and
- 9.1.3 the enforceability of any other Agreement formed in accordance with these terms.

10. **WARRANTIES**

Each of the Seller and the Customer represents, warrants and undertakes to the other that it has full power and authority to enter into and perform its obligations under the Agreement.

11. **LIMITATION OF LIABILITY**

11.1 **Financial limitation**

- 11.1.1 The Seller's total financial liability for all Events of Default in each period of twelve (12) calendar months or part thereof (a "Contract Year") during the term of the Agreement shall not exceed an amount equal to the aggregate Price paid and payable from time to time during the Contract Year or a fixed sum of two million pounds (£2,000,000) (whichever is lower), except that nothing in the Agreement shall affect the liability of the Seller for death or personal injury, fraud, or any other liability to the extent it cannot be excluded or limited by law.
- 11.1.2 Notwithstanding Clause 11.1.1, the Seller's total financial liability for all Asbestos Events of Default in each Contract Year during the term of the Agreement shall not exceed an amount equal to the aggregate Price paid from time to time during the Contract Year or a fixed sum of fifty thousand pounds (£50,000), (whichever is lower).
- 11.1.3 The monetary limitations set out in this Clause 11 (Financial Loss) shall not apply to the obligation of the Customer to pay the Price in accordance with the Agreement.

11.2 **Consequential Loss**

In no event shall the Seller be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Agreement for any Loss for which the Customer has assumed the risk under the Agreement, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.

11.3 **Exclusion of implied terms**

All warranties, conditions or terms not set out in this Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise are hereby excluded except to the extent they may not be excluded or limited by law.

11.4 **No claims**

- 11.4.1 The Customer undertakes that it shall not bring any claim against any individual employee or officer of the Seller in respect of or relating to the Seller in connection with or arising from the Agreement.
- 11.4.2 Each individual to which Clause 11.4.1 refers is a beneficiary under that Clause, and may enforce the benefit of it under the Contracts (Rights of Third

Parties) Act 1999, except that the parties may rescind or vary Clause 11.4.1 without the consent of the relevant individual.

11.5 **Acknowledgment**

11.6 The Price is determined on the basis of the exclusions from and limitations of liability contained in the Agreement.

11.7 The Customer accepts that these exclusions and limitation are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Customer for an Event of Default or an Asbestos Event of Default of the Seller may be disproportionately greater than the Price.

11.8 The Seller is willing to arrange for additional insurance cover to enable the Seller to take on the burden of additional liability to the Customer, provided that the Customer pays the Seller a commensurately higher amount than the Price.

11.9 If the Customer wishes the Seller to obtain a quotation for additional insurance cover accordingly, the Customer shall notify the Seller as soon as reasonably practicable after the date of the Order.

12. **CONFIDENTIALITY**

12.1 **Undertakings of confidentiality**

12.1.1 Each party undertakes to the other in relation to the Confidential Information of the other:

- (a) to keep confidential all Confidential Information;
- (b) not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
- (c) not to use Confidential Information except for the purposes of performing its obligations under the Agreement (and in particular not to use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

12.1.2 The provisions of Clause 12.1.1 shall not apply to Confidential Information to the extent that it is or was:

- (a) already in the possession of the other free of any obligation of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of this Clause 12.1 (Undertakings of Confidentiality);
- (c) required to be disclosed:
 - (i) pursuant to applicable law, or the rules of any exchange on which the securities of a party are or are to be listed; or
 - (ii) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure.

12.2 **Damages not an adequate remedy**

Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Clause 12.1 (Undertakings of Confidentiality) and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of Clause 12.1 (Undertakings of Confidentiality).

13. **FORCE MAJEURE**

13.1 **Effect of Force Majeure Event**

13.1.1 If the Seller is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event then:

- (a) to the extent that the Seller is so prevented, hindered or delayed, the Seller's obligations under the Agreement shall be suspended for so long as the Force Majeure Event continues;
- (b) as soon as reasonably possible after commencement of the Force Majeure Event, the Seller shall notify the Customer of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event, and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement, and shall:
 - (i) use reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement; and
 - (ii) as soon as reasonably practicable after the cessation of the Force Majeure Event, shall:
 - (A) notify the Customer of the cessation of the Force Majeure Event;
 - (B) resume performance of its obligations under the Agreement; and
 - (C) take all reasonable steps to recover any slippage.

13.2 **Termination as a result of a Force Majeure Event**

If any Force Majeure Event prevents, hinders, or delays performance of all or any part of the obligations of the Seller for more than three (3) calendar months, then by notice to the Seller, the Customer may terminate the Agreement without liability as of the date specified in the notice.

14. **RIGHTS OF THIRD PARTIES**

Except as provided in the Agreement, the Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.

15. **GENERAL**

15.1 **Entire Agreement and amendments**

15.1.1 This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all representations, including all pre-

contract misrepresentations and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties, which are not set out in the Order, except that this Clause 15.1.1 does not affect the liability of either party for any fraudulent misrepresentation.

15.1.2 Each of the parties represents, warrants and undertakes that:

- (a) in entering into the Agreement, the party does not rely on any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement; and
- (b) it shall not claim any remedy in respect of statements, representations, warranties or understandings made or repeated in the Agreement or in relation to the Agreement, other than breach of contract, and which shall be to the exclusion of any other remedy in respect of such statements, representations, warranties or understandings upon which it may have relied in entering into the Agreement, whether for misrepresentation or otherwise.

15.1.3 An amendment to the Agreement is ineffective unless it is in writing, expressly purports to amend the Agreement and is signed by both parties.

15.2 **Remedies general**

15.2.1 The rights and remedies of the Seller provided by the Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies of the Seller provided by law or in the Agreement.

15.2.2 The rights of the Customer under the Agreement are the Customer's only rights relating to the subject matter of the Agreement, and are to the exclusion of any other rights of the Customer provided by law other than the right to claim damages for breach of contract which is not otherwise excluded under the Agreement.

15.3 **Notices**

Any notice to be given under this Agreement shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may have been notified for these purposes. Notices shall either be delivered by hand or sent by first class post. A notice is deemed to have been received if sent by prepaid first class post, on the second Business Day after posting (excluding the day of posting). In proving service of the notice, it shall be sufficient to show that delivery by hand was made or that the envelope containing the notice was properly addressed and post as a first class pre-paid letter.

15.4 **Waiver**

Any failure or neglect by the Seller to enforce any of the provisions of the Agreement shall not be construed nor deemed to be a waiver of the Seller's rights and does not affect the validity of the whole or part of the Agreement nor prejudice the Seller's rights; any waiver by the Seller of its rights under the Agreement does not operate as a waiver in respect of any subsequent breach.

15.5 **Invalidity**

If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of the Agreement

and the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

15.6 **Assignment and sub-contracting**

15.6.1 The Customer shall not without the prior written consent of the Seller assign, transfer, charge, dispose of, deal with or subcontract its rights or obligations under the Agreement.

15.6.2 The Seller may assign its rights under the Agreement, including the right to receive the whole or part of the Price.

15.7 **No partnership**

Nothing in this Agreement shall or shall be deemed to create a partnership between the parties.

15.8 **Governing law**

This Agreement shall be governed by and construed in accordance with English law.

15.9 **Jurisdiction**

The courts of England and Wales shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement.

16. **DEFINITIONS**

16.1 **Meanings**

In the Agreement, unless the context otherwise requires, the following definitions apply:

“Agreement”	the agreement between the Seller and the Customer comprised of the Order and these terms;
“Asbestos Event(s) of Default”	a breach by the Seller of the Agreement, including any wilful or deliberate breach of contract, tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement of the Seller in connection with the Agreement arising out of the manufacture, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of Loss which may have contributed concurrently or in any sequence to a Loss as a result of the performance of the Services;
“Business Day”	Monday to Friday excluding public and bank holidays in England and Wales;
“Confidential Information”	in relation to the Customer or the Seller all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to this Agreement, whether orally, or in documentary, electronic or other form;
“Customer”	the person procuring the Services under the Agreement, identified in the Order;
“Event(s) of Default”	a breach by the Seller of the Agreement, including any wilful or deliberate breach of contract, a tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement of the Seller in connection with the Agreement;
“Force Majeure Event”	any event which is beyond the reasonable control of the Seller, and which affects the Seller's performance, including acts of God, war, terrorism, fire and natural disasters, including

“Insolvency Event”	<p>industrial action of the Seller’s staff; each and any of the following in relation to the Customer or the Seller (being the “Relevant Party”):</p> <p>(a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iii) the enforcement of any security over any assets of the Relevant Party; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Relevant Party;</p> <p>(b) the Relevant Party is unable to pay its debts as they fall due or is insolvent; or</p> <p>(c) the Relevant Party enters into a composition or arrangement with its creditors or any class of them;</p>
“Loss” and “Losses”	includes all loss, damage, cost and expense;
“Order”	a binding order for the procurement of the Services in consideration of the Price, (in the form the Seller requires (including the draft offer proposal document produced by the Seller and agreed by the Customer));
“Price”	the Price payable by the Customer under the Agreement set out in the Order or otherwise determined in accordance with the Seller’s list of Price or standard rates applicable to the Services from time to time;
“Seller”	Photon Fire Limited (Company number 04503061); and
“Specification”	means the Customer’s specification which may be produced by the Seller and agreed by the Customer.

16.2 **References**

16.2.1 References to:

16.2.2 “Clauses” are to clauses of the Agreement;

16.2.3 a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it except that, as between the parties, no modification, consolidation or re-enactment shall apply for the purposes of the Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party;

16.2.4 either party includes, where appropriate, persons deriving title under it;

16.2.5 “subsidiary” and “holding company” shall have the meanings given to them by section 1159 of the Companies Act 2006;

- 16.2.6 “includes” or “including” shall be construed without limitation to the generality of the preceding words;
- 16.2.7 any document (including this Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with the Agreement;
- 16.2.8 “writing” includes any method of reproducing words in a legible and non-transitory form, excluding e-mail; and
- 16.2.9 the singular includes the plural and vice versa.

16.3 **Headings**

The headings are for convenience only and shall not affect the interpretation of the Agreement.