

**ToR-TUR-2024- 026**  
**YILLIK MALİ MÜŞAVİRLİK VE MUHASEBE HİZMETİ**  
**GENEL İDARİ ve TEKNİK ŞARTNAMESİ**

**1- ARKA PLAN / BACKGROUND**

Save the Children, çocuklar için, dünyanın önde gelen bağımsız bir organizasyondur. 120 ülkede çalışıyoruz. Çocukların hayatlarını kurtarıyoruz; onların hakları için savaşıyoruz; potansiyellerini gerçekleştirmelerine yardımcı oluyoruz. Ortaklarımızla birlikte, dünyanın çocuklara davranış biçiminde atılımlara ilham vermek ve hayatlarında anında ve kalıcı bir değişim sağlamak için birlikte çalışıyoruz.

Save the Children is the world's leading independent organization for children. We work in 120 countries. We save children's lives; we fight for their rights; we help them fulfil their potential. We work together, with our partners, to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

**2- İŞİN KAPSAMI / SCOPE OF WORK**

<b>a) Niteliği, Türü, Miktarı</b>	Save the Children International Türkiye Ülke Ofisinin talep ettiği lokasyonlarda sağlanması planlanan Mali Müşavirlik ve Muhasebe hizmeti için yıllık anlaşma
<b>b) Yapılacağı Yer</b>	Adres bilgileri kısa listeye giren tedarikçiler ile paylaşılacaktır.
<b>c) İşe Başlama Tarihi</b>	Mayıs 2024
<b>d) İşin Süresi</b>	1 YIL

**3- TEKLİF SUNUMU / SUBMISSION OF BID**

Teklifler en geç **30 Nisan 2024, 17:00'a (yerel saat; GMT +2)** kadar elektronik olarak aşağıda belirtilen adrese sunulmalıdır. Dosyaların tek e-mail'e sığmaması durumunda birden fazla e-mail'de gönderebilirsiniz. / Quotations must be submitted latest by **30 April 2024, 17:00 (local time; GMT+2)** electronically to below address. If mail server does not allow you to attach all documents, you can send in separate e-mails.

[cihat.yildirim@savethechildren.org](mailto:cihat.yildirim@savethechildren.org)

**a) Sunulacak Dökümanlar / Documents to be Submitted**

- Değerlendirme bölümünde istenen dökümanlar (4. Bölüme bakınız) / Documents indicated in "Evaluation" section (please refer to Section 4)
- Kaşeli ve imzalı genel idari ve teknik şartname ve finansal teklif (A1, A2, A3 ve A4) / Copy of signed and stamped administrative and technical terms of reference (A1, A2, A3 and A4)
- TOR-TUR-2024-026 imza-kaşeli /TOR-TUR-2024-026 (must be signed and stamped)

#### **b) SORU ve AÇIKLAMALAR /Request for Clarifications**

Soru ve açıklama istekleriniz için **28 Nisan 2024, 17:00'a kadar** [cihat.yildirim@savethechildren.org](mailto:cihat.yildirim@savethechildren.org) adresinden bizlerle iletişime geçmenizi rica ederiz / We kindly request you to contact us @ [cihat.yildirim@savethechildren.org](mailto:cihat.yildirim@savethechildren.org) until **28 April 2024, 17:00**.

#### **4. DEĞERLENDİRME KRİTERLERİ / EVALUATION CRITERIA**

##### **ZORUNLU KRİTERLER / ESSENTIAL CRITERIA**

İstekliler takip eden kriterleri yerine getirmelidir: / Bidder must meet the following criteria;

- Teklif sahibinin ana iş faaliyet kolu Mali Müşavirlik, Muhasebe ve danışmanlık olmalıdır. (SCI gerekli gördüğü takdirde mizan talep edecektir) / Bidder's main line of business activity shall be Certified Public Accountant , Accounting and consultancy. (SCI has the right to request for further documentation such as trial balance)
- 2022 / 2023 (son kapanan) finansal yılına ait finansal bilanço/vergi beyannamesi / financial statement of 2022 / 2023
- Firma kaydı ile ilgili gerekli belgeleri sununuz (Ticari Sicil Gazetesi, Vergi Levhası, İmza Sirküleri, Ticaret Odası Kaydı sunulan teklifin imza sahibi için imza sirküleri) / Please provide necessary documentation for proof of your registration in country (Trade Registry Gazette, Chamber of Commerce Registration, Tax Documentation, Circular of Signature for signatory person for the offer submitted)
- SCI politikalarına tam uyum (SCI Policies isimli dökümanın kaşeli ve imzalı kopyasını teklifinizle birlikte sununuz) / Full compliance with SCI standard policies (Please sign and stamp the document namely SCI Policies and send together with your proposal).
- Teknik ve idari şartnameye tam uyum (bu maddeye dair teyit yazısı sununuz ve/veya şartnamelerin kaşe ve imzalı kopyalarının sunulması) / Full compliance with the technical and administrative terms of reference. Please provide confirmation letter and/or submission of signed and stamped ToRs.
- Geçmiş yıllarda STK'lar ile çalışma tecrubesinin olması/ Experience of working with NGOs in previous years
- Firmada en az bir muhasebe uzmanının İngilizce biliyor olması. / At least one accounting specialist in the firm should be fluent in English.
- Talep edilen hizmetler için yetkilendirilecek personelin özgeçmişi ile birlikte bir ön yazı sunulmalı. / Offers shall provide the CV of the key personnel for the requested services along with a cover letter.
- Teklif veren firmanın odaya kayıtlı mali müşavirlik belgesinin olduğunu kanıtlar belge sunması. / The bidder is able to demonstrate that proving that the bidding company has a CPA registered in the chamber.

##### **KAPASİTE KRİTERLERİ / CAPABILITY CRITERIA (30%)**

- Firma bünyesinde gerektiğinde ofisimizi ziyaret edebilecek bir Muhasebe uzmanını buldurabileceğini yazılı olarak konfirme etmesi- En az 1 SMMM belgesi olan muhasebe uzmanı olduğu kanıtlanmalı – En az 3 tane de muhasebe uzmanı olmalı (Levent Ofis) / The firm must confirm

in writing the availability of an accountant who can visit our office if necessary (Levent) (At least 1 staff with CPA and 3 staff Accounting Specialist **(%15)**)

- Teknik teklifin kalitesi ve Save the Children ekibi tarafından talep edilen teklife uygunluk. (Firmada YMM bulunması, talep edilen SMMM sayısından daha fazlasının bulunması, ek olarak ACCA ruhsatının bulunması, IFRS sertifikası gibi kriterlere bakılacaktır.) /The quality of the technical proposal and compliance with the proposal that was requested by the Save the Children team. ( YMM presence in the firm, more than the requested number of CPAs, additional ACCA license, IFRS certification, etc.) **(%5)**
- Son 3 yılda benzeri kapsamda iş yapıldığına dair 3 referans ve bu işleri belgeler fatura/hakediş/sipariş formu vs dökümanlar(tercihen konsolosluklar, STK'lar ile çalışmış olması) / 3 references within similar scope of work in last 3 years with document of proof invoice, purchase order, contract etc. (preferably NGOs,) **(10%)**

#### **SÜRDÜRÜLEBİLİRLİK KRİTERLERİ / SUSTAINABILITY CRITERIA (10%)**

- Teklif sahibi, sürdürülebilirliği geliştirmeyi amaçlayan faaliyetler göstermeli veya kurumlarında bu yönde süreçler bulunmalıdır. (örn. Çalışanları arasında cinsiyet eşitliği, politikalar, eğitim programları, eşit işe eşit ücret vb.) / The bidder should demonstrate activities or has processes in place within their organisation, aimed at improving sustainability. (e.g. gender equality, policies, training programmes, equal pay for equal work etc). **(10%)**

#### **FİNANSAL KRİTERLER / FINANCIAL CRITERIA (60%)**

- Teklif detaylı döküm olarak ve **Türk Lirası (TRY)** üzerinden gönderilmelidir (KDV ve diğer ücretler de dahil olmalı ve ayrıca belirtilmelidir). Proposals should be sent in **Turkish Lira (TRY)** and a detailed breakdown. Proposals should be all inclusive (VAT and other costs shall be included and detailed) **(%60)**
- Vereceğiniz teklif Mayıs 2024-Mayıs 2025 tarihleri arasında olmak üzere 1 yıl geçerli olacaktır.

#### **GENEL İDARİ ŞARTNAME**

##### **GENEL İDARİ A 1:**

Hizmetin gerçekleşmesi için yüklenici aşağıdaki kalemlerin ihale bedeli içinde olacağını kabul edecektir. Hizmetin gerçekleşmesi için aşağıdaki kriterleri hizmet sağlayıcı ihale şartlarına uygun olacağını pesinen taahhut ve kabul eder.

- Yüklenici firma idari ve teknik şartnamede belirtilen personel sayısını devamlı olarak korumak, ayrılan elamanların yerine derhal yenisini bulmak zorundadır.
- Tüm personel 18 yaşından büyük olacaktır.
- Yüklenici, idari ve teknik şartnamede tarif edilen hizmet işlerinin gerçekleştirilmesini teminen, bu şartnamede nitelikleri belirtilen personelin istihdamı ve çalıştırılmasıyla sorumlu olup, organizasyon ile sürekli koordinasyon içinde olacaktır.

- Yapılacak işler, Save the Children'in belirteceği kurallara/usulüne uygun ve sürekli, kesintisiz, devamlılığı sağlanarak yapılacaktır.
- Yüklenici, Save the Children'in her türlü yazılı veya sözlü çeviri hizmeti taleplerine 24 saat içinde yazılı olarak işin kaç gün veya saat süreceğinin bilgisini verecektir.
- Yüklenici çalıştırdığı yabancı personelin (eğer var ise) iş izinlerini almış olmalıdır.
- Yüklenici, İş Kanunu, Sosyal Sigorta Mevzuatı ve diğer kanun ve mevzuattan doğan yükümlülüklerini yerine getirmekle mükelleftir. Yüklenici sigortasız işçi çalıştıramaz.
- Yüklenici, çalıştırdığı personelini, SGK'ya kayıt ettirmek, primlerini eksiksiz ödemek ve her ay sonunda SGK bildirgelerini organizasyona ibraz etmek zorundadır.
- Çalışanlarını sigorta ettirmemesi durumunda SGK tarafından uygulanacak her türlü cezai müeyyideden Yüklenici sorumludur.
- Kamu kurum ve kuruluşlarında çalışmalardan men edilmiş kişiler çalıştırılmayacak, işçi çalıştırılması hususunda yüklenici İş Kanunu hükümlerine kesinlikle uyacaktır. Uymadığı takdirde tüm sorumluluk yükleniciye ait olacaktır.

#### **GENEL İDARİ A 2:**

Yüklenici tarafından Save the Children'a verilecek olan hizmet için çalıştırılacak personelin aşağıda belirtilen bilgilerini paylaşacaktır ayrıca yüklenici aşağıdaki bilgilerin doğruluğunu peşinen taahhüt ve kabul eder.:

- SGK işe giriş bildirgesi
- Çalışma izni (İstihdam edilen yabancı personel için)

#### **GENEL İDARİ A 3:**

Yüklenici, aşağıdaki belirtilen işleri gerçekleştirecektir;

- Defter Tutma Hizmetleri – Bookkeeping Services
- Bordro Hazırlama Hizmetleri ( Ortalama 200-300 çalışan için) – Payroll Preparation Services (Apr. 200-300 staff)
- Vergi Değerlendirme Danışmanlığı ve gerekli durumlarda organizasyonu vergi departmanına karşı temsil etmesi– Tax Assessment Consultancy and represent the organization to the tax department when necessary
- Aylık SGK ve vergi hesaplamalarının yapılması ve beyannamelerin zamanında iletilmesi- monthly SGK and tax calculations and timely submission of tax declarations
- Finans alanındaki boşlukları dolduracak Muhasebe Uzmanı- Accounting Specialist to fill gaps in Finance
- Opening up a workspace and obtaining E-Bildirge password – Dosya açılış ve e-bildirge şifre işlemleri
- Preparation of Annual Ledgers, approval of those ledgers etc. (including stationaries and other official expenses) – Yıllık defterlerin hazırlanması, bu defterlerin onaylanması vb. (kırtasiye ve diğer resmi harcamalar dahil)

#### **GENEL İDARİ A 4:**

##### **Görev ve Sorumluluklar**

3568 Sayılı “Serbest Muhasebeci Mali Müşavirlik ve Yeminli Mali Müşavirlik Kanunu” Madde 2’de Mali müşavirlik mesleğinin görev tanımı şu şekildedir (Mevzuat, 2021):

Gerçek ve tüzelkişilere ait teşebbüs ve işletmelerin;

- 1- Genel kabul görmüş muhasebe prensipleri ve ilgili mevzuat hükümleri gereğince, defterlerini tutmak, bilanço kâr-zarar tablosu ve beyannameleri ile diğer belgelerini düzenlemek ve benzeri işleri yapmak.
- 2- Muhasebe sistemlerini kurmak, geliştirmek, işletmecilik, muhasebe, finans, malî mevzuat ve bunların uygulamaları ile ilgili işlerini düzenlemek veya bu konularda müşavirlik yapmak.
- 3- Yukarıdaki bentte yazılı konularda, belgelerine dayanılarak, inceleme, tahlil, denetim yapmak, malî tablo ve beyannamelerle ilgili konularda yazılı görüş vermek, rapor ve benzerlerini düzenlemek, tahkim, bilirkişilik ve benzeri işleri yapmak.

Sonuç olarak genellikle üniversitelerin kamu yönetimi, işletme, maliye ve iktisat gibi bölümlerini okuyup mali müşavirlik stajlarını bitirdikten sonra bakanlığın yaptığı sınava giren ve bu sınavdan başarılı olanlar "3568 sayılı Serbest Muhasebeci Mali Müşavirlik ve Yeminli Mali Müşavirlik Kanunu" hükümleri uyarınca meslek icrası hakkı kazanmaktadır. Bunların ünvanı "Serbest Muhasebeci Mali Müşavir (SMMM)" olmaktadır.

Mali müşavir kurumun muhasebe etkinliklerini olması gerektiği şekilde uygulanmasını sağlamaktan sorumludur. Nitekim bu muhasebe çalışmalarının mevzuatlara uygun olup olmadığını değerlendirmekte ve denetlemektedirler. Gerekli durumlarda ise hem resmi mercilere hem de işletmeye tarafsız olarak ilgili bilgilerin iletimini yapmaktadırlar. Bunun yanında şirketlerin finansal denetleme kurumları ile olan ilişkisinin sağlıklı bir şekilde yürütülmesine de yardımcı olmalıdırlar.

#### **A) UYGULAMA ESASLARI VE KONTROLLÜK**

1. Ödemeler ihale ekinde belirtilen birim hizmetlerin ifası üzerinden aylık olarak ödenecektir. Hizmet bedeli TL olarak ödenecektir.Yüklenici herhangi bir hizmet için fiyat farkı talep edemeyeceğini kabul ve taahhüt eder.
2. Bu sözleşmede avans veya ihrazat ödemesi ile ara hakediş yapılmayacak olup işlerin teslimi tamamlandıktan sonra ödeme talep edilebilecektir.
3. Siparişe konu olan işin tamamlanılması, SCI görevlisinin onayına tabii olacaktır. İş sonunda talep edilebilecek revizyonlar tamamlanılmadan sipariş tamamlanmış sayılmayacak ve ödemeler revizyon vs müteakibinde hak ediş gerçekleşince yapılacaktır.

## GENERAL TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

### 1. Definitions and Interpretation

#### 1.1 Definitions. In these Conditions, the following definitions apply:

- (a) **Agreement:** the document entitled "Agreement for the Supply of Services", between the Customer and the Supplier.
- (b) **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with Condition 16.6.
- (c) **Contract:** the contract between Customer and Supplier consisting of the Agreement, these Conditions and, where applicable, the Order. Should there be any inconsistency between the documents comprising the Contract, these Conditions shall have precedence unless otherwise stated in the Agreement or in the Order.
- (d) **Deliverables:** all documents, products and materials developed by the supplier or its agents, contractors and employees as part of or in relation to the Services in any form of media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- (e) **Force Majeure Event:** has the meaning given in Condition 15.
- (f) **Order:** The Customer's order for the supply of Services, as set out in the Customer's purchase order form.
- (g) **Services:** the services to be provided by the Supplier (or any part of them) as set out in the Order
- (h) **Specification:** any specification for the Services, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

#### 1.2 Interpretation. In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. The Services

2.1 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

2.2 In providing the Services, the Supplier shall:

- (a) ensure that the Services and Deliverables correspond with their description in the Order and any applicable Specification, and that they comply with all applicable statutory and regulatory requirements;
- (b) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (h) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on 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
- (i) not infringe the rights of any third party or cause the Customer to infringe any such rights.

2.3 The Supplier represents and warrants that it has obtained and shall make available to the Customer all licences, clearances, permissions, authorisations, consents and permits necessary for the supply of the Services to the Customer and that the Deliverables shall be fit for all purposes for which the Supplier is or ought reasonably to be aware that they are required by the Customer.

2.4 The Customer reserves the right at any time to inspect work being undertaken in relation to supply of the Services, test the Services and inspect the premises where the Deliverables are being manufactured or stored. The Customer's inspector may adopt any reasonable means to satisfy himself or herself that the correct materials, workmanship and/or care and skill are or have been used.

2.5 If following such inspection or testing the Customer considers that the Services do not conform or are unlikely to comply with the Supplier's undertakings at Condition 2.2, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

2.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 3. Ethical Standards and Audit Requirements

3.1 The Supplier, its suppliers and sub-contractors shall observe the highest ethical standards and comply with all applicable laws, statutes, regulations and codes (including environmental regulations and the International Labour Organisation's international labour standards on child labour and forced labour) from time to time in force.

3.2 The Supplier, its suppliers and sub-contractors shall not in any way be involved directly or indirectly with terrorism, in the manufacture or sale of arms or have any business relations with armed groups or governments for any war related purpose or transport the Goods together with any military equipment. The Supplier shall also warrant that it has checked and will continue to check its staff, suppliers and sub-contractors against the United Kingdom Treasury List of Financial Sanctions Targets, the European Commission's List of Persons and Entities Subject to Financial Sanctions and the list of specially designated individuals and blocked persons maintained by the Office of Foreign Assets Control ('OFAC') of the Department of the Treasury of the United States of America (and any similar list of prohibited persons and entities) and will immediately inform the Customer of any apparent correlation.

3.3 The Supplier shall ensure that its employees, suppliers and sub-contractors are aware of, understand, and adhere to the Customer's:

- (a) Child Safeguarding policy;
- (b) Fraud, Bribery and Corruption policy; and
- (c) Human Trafficking and Modern Slavery policy,

(together, the "Mandatory Policies"), attached to these Conditions.

3.4 The Supplier, its suppliers and sub-contractors shall be subject to, and shall in relation to the Contract act in accordance with, the IAPG Code of Conduct and any local or international standards which are applicable to the Goods.

3.5 The Supplier is taking reasonable steps (including but not limited to having in place adequate policies and procedures) to ensure it conducts its business (including its relationship with any contractor, employee, or other agent of the Supplier) in such a way as to comply with the Mandatory Policies, and shall upon request provide the Customer with information confirming its compliance.



3.6 The Supplier shall notify the Customer as soon as it becomes aware of any breach, or suspected or attempted breach, of the Mandatory Policies, and shall inform the Customer of full details of any action taken in relation to the reported breach.

3.7 The Supplier agrees to allow the Customer's employees, agents, professional advisers or other duly authorized representatives to inspect and audit all the Supplier's books, documents, papers and records and other information, including information in electronic format, for the purpose of making audits, examinations, excerpts and transcriptions. The Supplier agrees the extension of such rights to duly authorized representatives of the European Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF), the United States Government, the Controller General of the United States and any other such representatives instructed by a donor organization of the Customer to carry an audit of the Supplier's operations.

#### 4. **Performance**

4.1 The Supplier shall perform the Services in accordance with the timing specified in the Agreement. Time shall be of the essence in respect of this Condition 4.1.

4.2 If the Supplier fails to comply with the time requirement referred to in Condition 4.1 the Customer, without prejudice to its other rights under the Contract, shall be under no obligation to make payment in respect of any Services which are not accepted.

4.3 The Services shall be supplied at the destination and on the date or within the period specified in the Agreement and, in any event, during the Customer's usual business hours or as instructed by the Customer.

4.4 The Customer shall not be deemed to have accepted any Services until the Customer has had reasonable time to inspect them following performance.

4.5 The Customer shall be entitled to reject any Services supplied which are not in accordance with the Agreement. If any goods that belong to the Customer or that the Customer has agreed to purchase are being transported as part of the Services, such goods shall be returned to the Customer without delay.

4.6 If any Services are so rejected, at the Customer's option, the Supplier shall forthwith re-supply substitute Services which conform with the Contract. Alternatively, the Customer may cancel the Contract, return any Deliverables to the Supplier at the Supplier's expense and claim costs and direct damages from the Supplier.

4.7 The Supplier shall ensure that it is available at the request of the Customer outside normal business hours, in order to address the requirements of any emergency in a timely fashion.

#### 5. **Indemnity**

5.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) breach of any warranty given by the Supplier in Condition 9;

- (b) personal injury, death or damage to property caused to the Customer or its employees arising out of, or in connection with, defects in the supply of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (c) 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 supply or use of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (d) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, 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;
- (e) 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 supply of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (f) any claim in respect of death or personal injury howsoever caused to any of the employees of the Supplier whilst at the premises of the Customer save where caused by the direct negligence of the Customer or its respective employees or agents.

## **6. Price and Payment**

- 6.1 The price of the Services shall be the price set out in the Order which includes packing, labelling, carriage, insurance, delivery, royalties and licence fees (if applicable) and all other charges, taxes, duties and impositions and is not subject to alteration for any reason whatsoever.
- 6.2 The Customer reserves the right to withhold payment in respect of Services supplied which are defective, rejected or otherwise not in accordance with the requirements of the Contract.
- 6.3 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

## **7. Termination**

- 7.1 The Customer may terminate the Contract in whole or in part at any time and for any reason whatsoever by giving the Supplier at least one month's written notice.
- 7.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier and claim any losses (including all associated costs, liabilities and expenses including legal costs) back from the Supplier at any time if:
  - (a) the Supplier is in material breach of its obligations under the Contract; or

- (b) the Supplier is in breach of its obligations under the Contract and fails to remedy such breach (where the breach is capable of remedy) within 14 days of written request; or
- (c) the Supplier becomes insolvent or makes any voluntary arrangement with its creditors or (being an individual or corporate entity) becomes subject to an administration order or goes into liquidation or the Supplier ceases, or threatens to cease, to carry on business; or
- (d) the Customer reasonably believes that any of the events mentioned above in sub-sections (a) through (c) is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
- (e) the Customer reasonably believes that continuing contractual relations with the Supplier may damage the reputation of the Customer; or
- (f) the Customer reasonably believes that the Supplier has or is engaged in corrupt, fraudulent, collusive or coercive practices.

**7.3** Termination of the Contract shall not affect Conditions 2.2, 4.2(a), 4.4, 4.5, 4.6, 5, 8, 9, 12, 13, 14, and 16.7 which shall continue without limit in time. Termination of the Contract shall not affect any rights, liabilities or remedies arising under the Contract prior to such termination.

## **8. Customer's Name, Branding and Logo**

The Supplier shall not use the Customer's name, branding or logo other than in accordance with the Customer's written instructions or authorization.

## **9. The Supplier's Warranties**

**9.1** The Supplier warrants to the Customer that:

- (a) the Services will be performed by appropriately qualified and trained personnel, with the best care, skill and diligence and to such high standards of quality as it is reasonable for the Customer to expect in all the circumstances;
- (b) it has all authorisations from all relevant third parties to enable it to supply the Services without infringing any applicable law, regulation, code or practice or any third party's rights and has all necessary internal authorisations to approve the execution and performance under the Contract and will produce evidence of that action to the Customer on its request;
- (c) it will ensure that the Customer is made aware of all relevant requirements of any applicable law, regulation or code of practice which applies or is relevant to the supply of the Services to the Customer;
- (d) information in written or electronic format supplied by, or on behalf of, the Supplier to the Customer at any stage during the tender process, the negotiation process, the due diligence process or the term of the Contract was complete and accurate in all material respects at the time it was

supplied, and any amendments or changes to the previously supplied information will be provided to the Customer without delay;

- (e) it will not and will procure that none of its employees will accept any commission, gift, inducement or other financial benefit from any supplier or potential supplier of the Customer;
- (f) none of its directors or officers or any of the employees of the Supplier has any interest in any supplier or potential supplier of the Customer or is a party to, or are otherwise interested in, any transaction or arrangement with the Customer; and

**9.2** In case of any situation constituting or likely to lead to a breach of a warranty in Clause 9.1 during the term of this Contract, the Supplier shall:

- (a) notify the Customer in writing and without delay of such breach; and
- (b) take all necessary steps to rectify this situation.

The Customer reserves the right to verify that the measures taken are appropriate and to request additional steps are taken with a specified time period. Failure to implement the requested measures may lead to the termination of the Contract. These rights are without prejudice to the Customer's rights in Clause 9.1

## **10. Re-tendering**

The Supplier undertakes to fully co-operate with the Customer in relation to any tender process which may, at the option of the Customer, be carried out at any time in relation to the supply of any of the Services.

## **11. 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 such heads of liability as may arise under or in connection with the Contract, 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.

## **12. Confidentiality**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain (the "**Confidential Information**"). The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

### **13. Customer property**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

### **14. Notices**

**14.1** Any notice under or in connection with the Contract shall be given in writing to the address specified in the Agreement or to such other address as shall be notified from time to time in accordance with this Condition and shall be sent by prepaid first-class post, recorded delivery, e-mail, fax or by commercial courier. All notices sent internationally shall be sent by courier or e-mail.

**14.2** Any notice shall be deemed to have been duly received if sent by prepaid first-class post or recorded delivery, on the second day after posting, or if delivered by commercial courier, on the date that the courier's delivery receipt is signed.

**14.3** This Condition 14 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall include e-mails and faxes.

### **15. Force majeure**

**15.1** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event provided that the Supplier shall use best endeavours to cure such Force Majeure Event and resume performance under the Contract.

**15.2** A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters, or extreme adverse weather conditions.

**15.3** If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 14 days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

### **16. General**

**16.1** Assignment and subcontracting:

(a) The Customer may at any time assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Contract.

- (b) The Supplier may not assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

**16.2** Severance:

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**16.3** Waiver and cumulative remedies:

- (a) No waiver of any right or remedy under the Contract shall be effective unless it is in writing and signed by both parties. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**16.4** No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**16.5** Third party rights: A person who is not a party to the Contract shall not have any rights under or in connection with it.

**16.6** Variation: Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer. The Customer reserves the right to conduct a formal review of the Contract after 12 months. For the avoidance of doubt, no terms and conditions produced by the Supplier, including, but not limited to, those forming part of the Supplier's quotation, shall supersede and take precedence over these Conditions and the Contract.

**16.7** Governing law and jurisdiction: The Contract shall be governed by and construed in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).