

Conditions of Trading

These Conditions govern all supplies to customers by W & J Linney Limited a company registered in England and Wales with Company number 00137552 at Adamsway, Mansfield, Nottinghamshire NG18 4FW (**Linney**) of Goods and Services (as defined below). These Conditions apply to the exclusion of any other terms and conditions. Linney may change these Conditions from time to time. Please read these Conditions prior to making each purchase.

1. Interpretation

1.1 The following terms shall apply to these Conditions:

Business Day: any day which is not a Saturday, Sunday or public holiday in England;

Conditions: the conditions set out in this document and (unless the context otherwise requires) includes any supplemental or special conditions appearing or referred to on an Estimate or Service Specification;

Contract: the contract between Linney and the Customer for the supply of Services in accordance with these Conditions;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation;

Customer: the person, company, firm or other organisation who purchases Services from Linney;

Customer Materials: any artwork, designs, drawings, written description, photograph, digital artwork, electronic data or other materials provided to Linney by the Customer in connection with which the Services are to be provided, including those materials input into the Linney Software by the Customer;

Individual Software: of a Customer for Linney to distribute when performing fulfilment Services;

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

Domestic Law: the law of the United Kingdom or a part of the United Kingdom;

Deliverables: any output of a Service as specified in an Estimate or Service Specification or otherwise agreed in writing between the parties (excluding any Goods, Linney Materials and any Linney Software);

Estimate: Linney's written quotation for the supply of Services;

Goods: the Customer Goods, the Manufactured Goods, the Third Party Goods and/or the Printed Material (or any part of them) set out in the Estimate or Services Specification;

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Linney or otherwise agreed in writing between the parties;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Linney Materials: any equipment, documents, information, materials, and systems including the Linney Software, provided by Linney and used directly or indirectly in the supply of the Goods or Services which are not the subject of a separate agreement between the parties under which title passes to the Customer but excluding the Customer Materials;

Linney Software: the IT portal system developed by Linney, including ('MyCentre' and 'MyStore') for use by Customers in managing the supply of Goods or Services to them by Linney;

Manufactured Goods: goods manufactured by Linney for the Customer;

Printed Material: printed output produced by Linney in carrying out the Services and delivered in accordance with the Service Specification;

Proof(s): a proposed detailed mock-up of the Goods provided by Linney to the Customer, in accordance (in all material respects) with the Goods Specification;

Services: the services supplied by Linney to the Customer as set out in the Service Specification and/or the Estimate or as otherwise agreed between

the parties;

Service Specification: the description or specification of the Services provided in writing by Linney to the Customer or agreed between Linney and the Customer (as the case may be);

Software Licence: the terms under which Linney grants the Customer the right to use the Linney Software;

Third Party Software: the third party software (if any) access to which is provided by Linney to the Customer.

1.2 In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provisions is a reference to such statute or statutory 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;
- (e) a reference to writing or written includes emails;
- (f) a reference to the singular includes a reference to the plural and vice versa.

2. Basis of Contract

2.1 The Estimate constitutes an offer by the Linney to provide Services in accordance with these Conditions.

2.2 The Estimate shall be deemed to be accepted on the earliest of:

- (a) the Customer issuing written acceptance of the Estimate;
- (b) the Customer verbally accepting the Estimate,
- (c) the Customer issuing a purchase order for the Services or
- (d) the Customer otherwise authorising Linney to commence provision of the Services (or any part of them)

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 A Contract may not be cancelled by the Customer except with Linney's written agreement and then only on terms which would fully indemnify Linney for its losses resulting from such cancellation.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Linney which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising issued by Linney and any descriptions of the Services contained in Linney's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 Any Estimate given by Linney may be retracted by Linney at any time prior to acceptance of it pursuant to condition 2.2. Any Estimate is only valid for a period of 20 Business Days from its date of issue.

2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.9 To the extent that Service Specification(s) has not been agreed as at the date of the Contract the parties shall work together in good faith to complete (and where required keep up to date) the Service Specification(s) and Linney shall use reasonable endeavours to keep the Customer updated in relation to any changes in the costs or fees resulting from any agreed changes to or finalising of the Service Specification.

3. Goods

- 3.1 The Goods are as described in the applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer or are Customer or Third Party Goods, the Customer shall indemnify Linney against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Linney in connection with any claim made against Linney for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Linney's use of the Goods Specification. This condition 3.2 shall survive termination of the Contract.
- 3.3 Linney reserves the right to amend the specification of the Goods and/or the Goods Specification if required by any applicable statutory or regulatory requirements and/or to avoid infringement of any third party Intellectual Property Rights.

4. Delivery

- 4.1 Unless otherwise agreed in writing by Linney, Linney shall deliver the Goods to the Customer's premises as notified to Linney by the Customer in writing or such other location as may be advised to Linney before delivery (**Delivery Location**) within three Business Days of Linney notifying the Customer that the Goods are ready or (in the case of Customer Goods) in accordance with the Service Specification.
- 4.2 Unless otherwise agreed in writing by Linney, delivery of the Goods shall be completed on the completion of loading of the Goods at Linney's premises.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Without prejudice to the foregoing, Linney shall not be liable for any delay in delivery of the Goods that is caused by a delay in transit, any third party, a Force Majeure Event or the Customer's or Customer's customer's failure to provide Linney with adequate delivery instructions or any other instructions or materials that are relevant to the supply of the Goods.
- 4.4 In the event that expedited delivery is agreed in writing between the parties and necessitates overtime or additional costs on the part of Linney, the Customer shall immediately pay such extra charges upon notification by Linney.
- 4.5 If Linney fails to deliver the Goods, its liability (whether in contract, tort, negligence or otherwise and howsoever arising) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the aggregate price of the Goods and relevant Services.
- 4.6 If the Customer or the Customer's customer fails to accept or take any delivery of the Goods within five Business Days of Linney notifying the Customer that the Goods are ready or otherwise fails to take delivery when it is tendered by Linney then, except where such failure or delay is caused by a Force Majeure Event or by Linney's failure to comply with its obligations under the Contract in respect of the Goods:
- delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which Linney notified the Customer that the Goods were ready (or, in the case of Customer Goods the date on which Linney attempted delivery);
 - Linney shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - the Customer shall pay Linney for the Goods, any Services and any additional costs and expenses incurred in the provision, by Linney, of the Goods or Services (including, without limitation, any storage costs).
- 4.7 Linney shall endeavour to deliver the quantity of Goods ordered by the Customer. The Customer shall not be entitled to reject the Goods if Linney delivers up to and including 10 per cent more or less than the quantity of Goods ordered but a pro-rata adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.8 Linney may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of the Goods

- 5.1 Subject to condition 5.7 Linney warrants that on delivery (unless specified otherwise in any applicable Goods Specification), the Goods shall:
- conform in all material respects with their description and any applicable Goods or Service Specification; and
 - be free from material defects in design, material and workmanship.

- 5.2 Subject to condition 5.3, if:

- the Customer gives notice in writing within 5 Business Days of delivery that some or all of the Goods do not comply with the warranty set out in condition 5.1;
- Linney is given a reasonable opportunity of examining such Goods; and
- the Customer (if asked to do so by Linney) returns such Goods to Linney's place of business at Linney's cost.

Linney shall, at its sole option, rectify or replace the defective Goods, or refund the price of the defective Goods in full. Linney shall have no liability or obligation under condition 5.1 other than to remedy the same in accordance with this condition 5.2.

- 5.3 Linney shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for the Goods' failure to comply with the warranty in condition 5.1 if:
- the Customer makes any further use of such Goods after giving a notice in accordance with condition 5.2;
 - the defect arises because the Customer failed to follow Linney's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - the defect arises as a result of Linney following any instructions, or using any materials, drawing, design or Goods or Service Specification supplied by the Customer;
 - the Customer alters or repairs such Goods without the written consent of Linney;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, any third party amendments (including, without limitation, processing) or abnormal or unsuitable working and/or storage conditions; or
 - the Goods differ from their description or the Goods or Service Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Where Linney offers to repair, replace or refund the Customer (in accordance with condition 5.2) and the Customer rejects such offer and opts to have the Goods repaired by a third party, the Customer shall automatically waive its rights to any remedy under condition 5.2 (including, without limitation, in respect of any refund of the price paid by the Customer to Linney for the defective Goods).
- 5.5 Except as provided in this condition 5, Linney shall have no liability (whether in contract, tort, negligence or otherwise and howsoever arising) to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Linney under condition 5.2.
- 5.7 Linney gives no warranty and shall have no liability in relation to any Third Party Goods or Customer Goods other than in relation to damage to such Goods caused by Linney's negligence in which case the Customer's sole remedy shall be (at Linney's nomination) either the replacement of such Goods or reimbursement of their cost price.
- 5.8 Prior to the printing of any Printed Material, Linney shall provide the Customer with a Proof. The Customer may:
- approve the Proof by written acceptance in writing to Linney; or
 - reject the Proof and require specific amendments by written notice to Linney. Such amendments and any additional Proofs shall be charged to the Customer; and
 - following approval by the Customer of any Proof, Linney shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, fault or defect in the Printed Material (whether grammatically, in type, format, style, layout, design or otherwise) where the Printed Material is, in all material respects, in accordance with the Proof approved by the Customer.
- 5.9 Where the Customer does not provide a written approval or rejection of the Proof (pursuant to condition 5.8), nominates Linney to review the Proofs or otherwise waives its rights of review of the Proofs, Linney shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, fault or defect in the Printed Material (whether grammatically, in type, format, style, layout, design or otherwise) where the Goods are, in all material respects, in accordance with the Service Specification.
- 5.10 The Customer acknowledges and accepts that paper, inks and other environmental conditions may impact on the colour or production of the Goods (**Minor Variation**). Linney shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for a Minor Variation between Proofs and the Printed Material.

5.11 Where Linney provides the Customer with any mock up, example or copy for approval in relation to any Deliverable or Goods other than a Proof (an **Approval Copy**) then such Approval Copy shall be deemed to be approved by the Customer on the earlier of;

- (a) the expiry of two Business Days from Linney providing the Customer with such Approval Copy and
- (b) the Customer providing written or oral approval of such Approval Copy.

following approval by the Customer of any Approval Copy, where the Customer does not provide approval or rejection of the Approval Copy (pursuant to condition 5.11 (b)), nominates Linney to review the Approval Copy or otherwise waives its rights of review of the Approval Copy (including under condition 5.11 (a)), Linney shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any error, fault or defect in the relevant Goods or Deliverables where the Goods or Deliverables (as the case may be) are, in all material respects, in accordance with the Approval Copy.

6. Title and Risk

6.1 Subject to condition 6.7 risk in the Goods shall pass to the Customer on despatch of the Goods for delivery. Linney shall have no liability to the Customer (whether in contract, tort, negligence or otherwise and howsoever arising) for any loss, damage or deterioration in the quality of the Goods following despatch of the Goods.

6.2 In relation to Goods to be delivered to a destination outside of Great Britain (**International Goods**) delivery shall, subject to condition 6.3, be made DAP (Incoterms 2020).

6.3 The Customer shall provide all documents, information and assistance to Linney or any third party (including, but not limited to, any carrier or governmental or quasi-governmental body) required to allow delivery of any International Goods to be made DAP within the delivery timescales agreed between the Customer and Linney. If the Customer is unable to comply or does not comply with this condition 6.3 Linney shall deliver the International Goods and all costs, charges, taxes and duties incurred in relation to the export or import of such International Goods shall be met by the Customer. For the avoidance of doubt Linney shall not be the importer of record of any International Goods.

6.4 Subject to condition 6.7 title to the Goods shall not pass to the Customer until Linney has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that Linney has supplied to the Customer in respect of which payment has become due.

6.5 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as Linney's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Linney's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Linney's behalf from the date of delivery;
- (e) notify Linney immediately if it becomes subject to any of the events listed in condition 13.1(b); and
- (f) give Linney such information relating to the Goods as Linney may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 13.1(b), or Linney reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Linney may have, Linney may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6.7 Title to and risk in the Customer Goods shall, at all times, remain with the Customer.

7. Supply of Services

7.1 Linney shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 Linney shall use its reasonable endeavours to meet any performance dates for the Services specified in any quotation, order confirmation and/or the Service Specification, but any such dates shall be estimates only and time

shall not be of the essence for the performance of the Services.

7.3 Linney shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Linney shall notify the Customer in any such event. Linney shall not be liable (whether in contract, tort, negligence or otherwise and howsoever) under this condition 7.3.

7.4 Linney warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 Linney does not warrant that any Individual Software will meet the Customer's requirements other than those agreed between the parties in writing or that the operation of any Individual Software will be error-free.

7.6 Subject to the Customer providing a documented example of the relevant defect or failure and all other relevant information and/or assistance as is requested by Linney, Linney shall remedy any breach of the warranties set out at conditions 7.1, 7.2 and 7.4 by the provision of remedial services (including at Linney's option replacement of defective items) free of charge. Linney shall have no liability or obligation under such warranties other than to remedy breaches of it in accordance with this condition 7.6.

7.7 On payment by the Customer of any relevant license fees Linney shall supply the Third Party Software and shall procure that the relevant third party (**Third Party Licensor**) licenses the Third Party Software to the Customer on the standard terms of the Third Party Licensor. Linney gives no assurances about the Third Party Software and the Customer acknowledges that its only remedy concerning any fault or problem in respect of the Third Party Software is the right it has against the Third Party Licensor under the licence of the Third Party Software (**Third Party Licence**). The Customer agrees to comply with the Third Party Licence in full.

7.8 Linney reserves the right to refuse to carry out any Services where, in its reasonable opinion such Services or any Goods or Deliverables are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity, or are otherwise actionable or in violation of any rules, regulations or laws. Linney shall notify the Customer in writing as soon as reasonably possible and state in reasonable detail, the reason for such refusal.

8. Customer Obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Estimate and (if submitted by the Customer) the Services and/or Goods Specification(s) are complete and accurate;
- (b) co-operate fully and in a timely manner with Linney in all matters relating to the Services;
- (c) provide Linney, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Linney to provide the Services;
- (d) provide Linney with such information and materials as Linney may reasonably require to supply the Services, and ensure that such information is complete and accurate in all respects and that all such materials are of a suitable quality and fit for purpose;
- (e) prepare the Customer's (or relevant third party's) premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date upon which the Services are to start; and
- (g) To the extent that it is using the Linney Software, comply in full with the Software Licence.

8.2 The Customer shall indemnify Linney and keep Linney fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by Linney or its sub-contractors of any Customer Materials infringes the intellectual property or other rights of any third party.

8.3 Linney shall not be obliged to check or verify the quality, accuracy, sufficiency or suitability of any Customer Materials, information or materials provided to it pursuant to the Contract. However, Linney may reject any Customer Materials which Linney finds unsuitable to be incorporated into and/or used as part of the provision of the Goods and/or Services (**Unsuitable Customer Materials**). The Customer shall replace any Unsuitable Customer Materials within 14 days of notification of the unsuitability of the Customer Materials by Linney. If the Unsuitable Customer Materials are not so replaced, Linney shall use the Unsuitable Customer Materials in the provision of the Goods and/or Services. Linney shall use reasonable endeavours to ensure good results in respect of Goods and/or Services where Unsuitable Customer Materials are used. However, the Customer acknowledges and accepts that Linney shall have no liability whatsoever (whether in contract, tort, negligence or otherwise and howsoever arising)

- for any error, default, defect and/or imperfection (**Defect**) in the Goods and/or Services where such Defect is due (whether wholly or in part) to the provision of Unsuitable Client Materials by the Customer. Any additional costs incurred by Linney by virtue of the provision of Unsuitable Customer Materials by the Customer may be charged to the Customer.
- 8.4 Linney may refuse to provide Goods and/or Services to the Customer where any goods, materials, information or work provided to Linney by the Customer have already been processed by a third party. In the event that Linney provides Goods and/or Services to the Customer with any goods, information, materials or work previously processed by a third party, the Customer acknowledges and accepts that Linney shall have no liability (whether in contract, tort, negligence or otherwise and howsoever arising) for the quality of the Goods and/or Services provided.
- 8.5 If Linney's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission of the Customer (and/or any supplier, sub-contractor or client of the Customer) or failure by the Customer (and/or any supplier, sub-contractor or client of the Customer) to perform any relevant obligation (**Customer Default**):
- Linney shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies (or procures the remedy of) the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Linney's performance of any of its obligations;
 - Linney shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for any costs or losses sustained or incurred by the Customer (and/or any client of the Customer) arising directly or indirectly from Linney's failure or delay to perform any of its obligations; and
 - the Customer shall reimburse Linney on written demand for any costs or losses sustained or incurred by Linney arising directly or indirectly from the Customer Default.
- 9. Charges and Payment**
- 9.1 The price for the Goods and/or Services shall be the price set out in Estimate or Service Specification and any agreed amendments thereto. The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 Unless agreed otherwise in the Service Specification and/or in the Estimate, the charges for Services shall be on a time and materials basis and:
- the charges shall be calculated in accordance with Linney's standard daily fee rates as notified by Linney to the Client from time to time;
 - Linney's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - Linney shall be entitled to charge an overtime rate for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 9.2(b); and
 - Linney shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Linney engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Linney for the performance of the Services, and for the cost of any materials.
- 9.3 Linney reserves the right to:
- increase its fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Linney shall give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Linney in writing within two weeks of the date of Linney's notice and Linney shall have the right (without limiting its other rights or remedies) to terminate the Contract by giving 12 weeks' written notice to the Customer (during which notice period the charge increase will not take effect); and
 - (without prejudice to condition 9.3(a)) increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods and or Services to Linney that is due to:
 - any factor beyond the control of Linney (including (without limitation) foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - without prejudice to condition 9.3 (b) (i) to the extent that they relate to material costs or any items purchased on behalf of the Customer on giving the Customer 30 days' written notice
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - any delay caused by any instructions or materials provided by the Customer or any failure by the Customer to give Linney adequate or accurate information, materials or instructions in respect of the Goods.
- 9.4 For the avoidance of doubt, Linney shall be entitled to charge the Customer for the time it has incurred in the preparation or execution of the whole or any part of the Goods or Services pursuant to the Contract.
- 9.5 Unless otherwise agreed by the parties in writing, Linney shall invoice the Customer monthly in arrears for the Goods and Services.
- 9.6 The Customer shall pay each invoice submitted by Linney:
- within 30 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by Linney, and
 - time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Linney to the Customer, the Customer shall pay to Linney such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 Without limiting any other right or remedy of Linney, if the Customer fails to make any payment due to Linney under the Contract by the due date for payment (**Due Date**), Linney shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above Linney bank's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Linney in order to justify withholding payment of any such amount in whole or in part. Linney may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Linney to the Customer.
- 10. Intellectual Property Rights**
- 10.1 Unless otherwise agreed between the parties in writing, and subject to condition 10.5, the Intellectual Property Rights in or arising out of or in connection with the Goods (other than the Customer Goods and/or any Third Party Goods) and/or Services shall be owned by Linney.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Linney obtaining a written licence from the relevant licensor on such terms as will entitle Linney to license such rights to the Customer.
- 10.3 All Linney Materials, the Linney Software and any Intellectual Property Rights subsisting in them are at all times the exclusive property of Linney. For the avoidance of doubt, the Customer shall not at any time have any Intellectual Property Rights or other rights of ownership in the Linney Software.
- 10.4 The Intellectual Property Rights in the Customer Materials shall be owned by the Customer.
- 10.5 Unless otherwise agreed in writing, the Customer acknowledges and accepts that Linney has no control over any content or information contained in the Printed Materials.
- 10.6 Linney may refuse to provide Goods and/or Services to the Customer if it reasonably believes any Customer Materials, information, materials and/or work infringes any applicable laws, regulations or third party rights (such as content that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (**Inappropriate Content**)).
- 10.7 The Customer shall indemnify Linney in full against all liability, damages, losses, costs and expenses incurred by Linney arising as a result of or in connection with the Customer Materials, or any other materials, information or works used, produced, printed, processed or dealt with in any way by Linney on behalf of the Customer pursuant to these Conditions (including, without limitation, where a claim or action is brought against Linney that the Customer Materials, materials, information or works form Inappropriate Content).
- 10.8 Notwithstanding the other provisions of this condition 10, Linney does not warrant that any concepts supplied by Linney to the Customer (in respect

of pitches, tenders or otherwise) do not infringe any existing third party intellectual property rights and Linney shall not be liable for any damages, costs or losses whether direct or indirect (and including, without limitation, loss of profits, loss of business and loss of goodwill) arising out of any claim by any third party relating to the concepts proposed by Linney.

11. Confidentiality

11.1 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 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 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. This condition 11 shall survive termination of the Contract.

12. Limitation of Liability

12.1 Nothing in these Conditions shall limit or exclude Linney's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation or any other matter which by law cannot be limited or excluded.

12.2 Subject to condition 12.1:

- (a) Linney shall under no circumstances whatever be liable to the Customer, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), for any loss of profit, loss of revenue, or any indirect or consequential loss arising under or in connection with the Contract (including, without limitation, loss of goodwill, loss of reputation, loss of data and loss of opportunity); and
- (b) Linney's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), shall in no circumstances exceed a sum equal to 110% of the sum paid to Linney by the Customer for the Goods or Services to which the claim relates.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 Notwithstanding anything else contained in these Conditions (and without limiting Linney's liability in respect of injury to or death of any person caused its negligence) Linney shall not be liable to the Customer for any defect in the Deliverables, Goods and/or Services arising from any drawing, design, specification or other information supplied by the Customer, whether in written, electronic or other format;

12.5 Any Third Party Goods or other items purchased by Linney in connection with the provision of the Services shall be purchased by Linney as the Customer's agent and, accordingly, Linney shall have no liability to the Customer in respect of such Goods/items.

12.6 Whilst Linney has taken reasonable steps to prevent the introduction of computer viruses, it cannot guarantee that viruses will not enter the Customer's systems through, via or as a result of Linney's systems or the provision of the Services, the Linney Software and/or the Individual Software. Accordingly, Linney shall not have any liability whatsoever (whether for breach of contract, negligence or otherwise) for any such entry where reasonable steps have been taken by or on behalf of Linney to prevent the same.

12.7 In relation to the Linney Software and the Individual Software, Linney shall not be liable to the Customer for any loss arising out of any failure by the Customer to comply with its obligations under the Contract or resulting from:

- (a) use of the whole or any part of such software with any equipment and/or software not specified in the Services Specification or approved by Linney for use in connection with such software;
- (b) repair, adjustment, alteration or modification of any part of such software not undertaken by Linney or its sub-contractor;
- (c) operator error, failure or error in operating or other software or any defect in the customer's IT equipment or environment;
- (d) Customer failure to keep restorable back-up and/or security copies of data.

12.8 This condition 12 shall survive termination of the Contract.

13. Termination

13.1 Without limiting its other rights or remedies, 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 this Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, has a bankruptcy order made against it; becomes insolvent or goes into liquidation, receivership or administration; has an administrator appointed; is wound up; has an encumbrancer take possession of any of its assets; enters into a composition or arrangement with its creditors; being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for dissolution of the partnership; or takes or suffers any similar or analogous action in any jurisdiction.

13.2 Without limiting its other rights or remedies, Linney may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:

- (a) fails to pay any amount due under this Contract on the due date for payment; or
- (b) undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.3 Without limiting its other rights or remedies, Linney shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Linney if:

- (a) the Customer fails to pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in condition 13.1(b), or Linney reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of Termination

14.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Linney all of Linney's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Linney shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Linney's Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then Linney may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) conditions which expressly or by implication have effect after termination shall continue in full force and effect.

15. Data Protection

15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.2 Where, for the purposes of the Data Protection Legislation, the Customer is the Controller and Linney is the Processor the provisions of conditions 15.3 to 15.5 (inclusive) shall apply.

15.3 Without prejudice to the generality of condition 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Linney and/or lawful collection of the Personal Data by Linney on behalf of the Customer for the duration and purposes of the Contract.

15.4 Without prejudice to the generality of condition 15.1, Linney shall, in relation to any Personal Data processed in connection with the performance by Linney of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless Linney is required by Domestic Law to otherwise process that Personal Data. Where Linney is relying on Domestic Law as the basis for processing Personal Data, Linney shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Linney from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect

- against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (i) the Customer or Linney has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Linney complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Linney complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this condition 15 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of Linney, an instruction infringes the Data Protection Legislation.
- 15.5 The Customer consents to Linney appointing third-party processors of Personal Data under the Contract. Linney confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which Linney will ensure reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Linney, Linney shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this condition 15.5.
- 15.6 The Customer acknowledges that Linney is reliant on the Customer for direction as to the extent to which Linney is entitled to use and process the Personal Data. Consequently, Linney will not be liable for any claim brought by a Data Subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by Linney, to the extent that such action or omission resulted directly from the Customer's instructions and the Customer shall indemnify Linney in full against any costs, claims, damages or expenses incurred by Linney as a result of any action by a Data Subject or regulator resulting from Linney following the instructions of the Customer and/or any breach by the Customer of any of the provisions of Clause 15.1.
- 15.7 Either party may, at any time on not less than 30 days' notice, revise this condition 15 by replacing it with any applicable controller to processor standard conditions or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 16. Force Majeure**
- 16.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this condition, or companies in the same group as that party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this condition); and
 - (i) interruption or failure of utility service.
- 16.2 Provided it has complied with Clause 16.1, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 2 weeks' written notice to the Affected Party.
- 17. Assignment and Other Dealings**
- Neither party may assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other matter with any of its rights or its obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 18. Variation**
- No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19. Waiver**
- 19.1 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.
- 19.2 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. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3 A party that waives a right or remedy provided under the Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 20. Rights and Remedies**
- The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 21. Severance**
- 21.1 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 condition shall not affect the validity and enforceability of the rest of the Contract.
- 21.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22. No Partnership or Agency**
- 22.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any

commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. Third Party Rights

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

24. Notices

24.1 Any notice 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 Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

24.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

24.3 This condition does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. 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.

26. Jurisdiction

Each party irrevocably agrees that the courts of England 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.