

**GENERAL CONDITIONS OF CONTRACT  
PURCHASE OF GOODS AND SERVICES**

You are a supplier of the goods and/or services ("**Goods**", "**Services**" or "**Goods and Services**", as applicable) set out in the purchase order that incorporates these General Conditions of Contract ("**Purchase Order**"). You have agreed to supply the Goods and Services set out in the Purchase Order on the terms and subject to the conditions set out in the Purchase Order and these General Conditions of Contract (together, this "**Agreement**"). Defined terms in these General Conditions of Contract have the meanings given to them in these General Conditions of Contract unless otherwise stated.

**1 PLACING ORDERS**

- 1.1 The Purchase Order is an offer to purchase Goods and Services from you on the terms and subject to the conditions set out in this Agreement. Howdens may submit specifications or other requirements relating to the Goods and Services to you in writing prior to or at the same time as submitting the Purchase Order ("**Specification**"), in which case any such Specification shall be incorporated into this Agreement.
- 1.2 A contract for the supply of the Goods and Services shall come into force upon your acceptance of the Purchase Order. You may accept the Purchase Order in a variety of ways including giving express notice of acceptance or by some other unequivocal acceptance by conduct (including accepting the whole or any part payment of the Price (as defined in Clause 9.1) and/or supplying the Goods and Services). Each Purchase Order (together with these General Conditions of Contract) shall, once accepted by you, constitute a separate contract.
- 1.3 Howdens shall be entitled to withdraw a Purchase Order at any time prior to your acceptance by notifying you.
- 1.4 The Purchase Order shall be deemed refused if you fail to accept it within thirty (30) days of Howdens' submission of the Purchase Order (or such other time period agreed between you and Howdens from time to time).
- 1.5 This Agreement is the only agreement between you and Howdens and contains the only terms and conditions on which Howdens are prepared to deal with you. No terms contained in or referred to in your quotation, acknowledgement of order, delivery note or elsewhere or implied by trade, custom, practice or course of dealing shall be binding on Howdens or form part of this Agreement. However, in submitting any Purchase Order, Howdens is relying upon any representations you have made to Howdens in relation to the Goods and Services to be provided by you under that Purchase Order.
- 1.6 If at any time Howdens enters into a long-form, bespoke negotiated agreement with you in relation to the provision of any particular goods and/or services, the terms of that agreement will prevail over the terms of this Agreement in relation to the provision of those goods and/or services only.

**2 SUPPLY OF GOODS**

- 2.1 In relation to any Goods to be supplied under any Purchase Order, you undertake that those Goods:
  - (a) shall be delivered by the delivery date specified in the Purchase Order or such other date as agreed between the parties in writing ("**Delivery Date**"), at no additional cost to Howdens, to the premises specified in the Purchase Order or such other address(es) as reasonably notified to you by Howdens from time to time ("**Delivery Address**");
  - (b) shall be sold with full title guarantee;
  - (c) shall be new and supplied in first-class condition;
  - (d) shall be properly and securely packaged (suitable for transit and storage) in such manner as to enable them to reach their destination in good condition; and
  - (e) shall be marked with the relevant Purchase Order number and such other information as Howdens requires.
- 2.2 Where Goods are to be delivered to any person other than Howdens (on Howdens' written instruction), delivery will not be deemed to be made until Howdens has given written receipt for such Goods or you have given Howdens written notification of delivery.
- 2.3 If any Goods supplied under any Purchase Order are manufactured by a third party, you shall ensure that Howdens receives the full benefit of any warranty, guarantee or other protection provided by the manufacturer in relation to such Goods.
- 2.4 At Howdens' request, you shall (at no additional charge) remove any packaging of the Goods from Howdens' premises and recycle or dispose of such packaging in a safe and lawful manner.

**3 SUPPLY OF SERVICES**

- 3.1 References in this Agreement to "**Services**" shall include all items, products, data, documents and other materials and deliverables (in any form) developed by you or on your behalf as part of or in relation to the supply of any Services under any Purchase Order ("**Deliverables**").
- 3.2 In relation to any Services to be supplied under any Purchase Order, you undertake to:
  - (a) perform those Services by the Delivery Date or in accordance with any other timeframe notified to you by Howdens;
  - (b) perform those Services in a professional manner with all due care and skill, to the best of your ability and to the standard required by Howdens;
  - (c) comply with any reasonable directions given by Howdens from time to time in respect of the nature and scope of the Services;
  - (d) ensure that your officers, employees, agents and contractors ("**Personnel**") engaged to provide those Services are competent and have the skills, qualifications and experience required to perform the Services to the standards required by Howdens; and
  - (e) be responsible for the acts or omissions of your Personnel in performing those Services.

**4 TITLE AND RISK**

- 4.1 Title to any Goods and/or Deliverables to be supplied under any Purchase Order shall pass to Howdens on the earlier of completion of delivery of the Goods and/or Deliverables to the Delivery Address or payment (in whole or part) of the Price to you.
- 4.2 In relation to any Goods and/or Deliverables to be supplied under any Purchase Order, risk to those Goods and/or Deliverables will pass to Howdens on completion of delivery of the Goods and/or Deliverables to the Delivery Address.

**5 OUR INSTRUCTIONS, POLICIES AND PROCEDURES**

- 5.1 In the supply of the Goods and Services, you undertake to:
  - (a) comply with Howdens' instructions;
  - (b) where the supply of any Goods and Services requires access to the Delivery Address, comply, and procure that your Personnel comply, with all Howdens' instructions, policies and procedures in relation to the access to, and behaviour of you and your Personnel at, the Delivery Address; and
  - (c) where the supply of any Goods and Services requires access to Howdens' IT systems, comply, and procure that your Personnel comply, with all Howdens' instructions, policies and procedures in relation to the access to, and use of, Howdens' IT systems.

**6 SUPPORT SERVICES**

- 6.1 You shall provide support services in relation to the Goods and Services (including technical guidance, training, and/or the provision of spare parts) to Howdens, its Group Companies and any of its customers for a reasonable period (which, for the avoidance of doubt, shall be at least twelve (12) months) from the delivery of the Goods and Services.
- 6.2 Where a technical manual is available for the Goods and Services, you shall supply to Howdens at least one (1) copy of that manual (in English) prior to delivery of the Goods and Services. The manual shall comprise descriptions, parts lists and other information as agreed by the parties and, where applicable, a preventative maintenance schedule.
- 6.3 You shall provide (and, where necessary, procure) all such information and assistance to Howdens and its Group Companies as Howdens may reasonably require in order to permit Howdens and any of its Group Companies to meet its own legal and regulatory requirements in relation to the Goods and Services.

**7 WARRANTIES**

- 7.1 You warrant, represent and undertake that:
  - (a) you are free and entitled to enter into this Agreement and to perform the obligations undertaken by you under this Agreement;
  - (b) you have not entered into any agreement with any third party that might conflict with the terms of this Agreement;

- (c) you will act in good faith in all your dealings with Howdens; and
  - (d) you shall, and shall procure that your Personnel shall, at all times comply in all respects with all applicable laws, regulations, orders, codes of practice, industry requirements and professional and industry standards (in each case, including in relation to occupational health and safety and product safety) that are applicable to the supply and performance of the Goods and Services, including in relation to the manufacture, marketing, packaging, labelling, storage, transport and sale of any Goods and Services provided under a Purchase Order ("**Applicable Laws**").
- 7.2 You warrant, represent and undertake that all Goods and Services:
- (a) conform to the Description (as defined in Clause 8.2) in all respects;
  - (b) conform to any Specification, drawings, samples or other description furnished to Howdens by you or specified by Howdens from time to time;
  - (c) be fit and sufficient for the intended purpose;
  - (d) be of satisfactory quality;
  - (e) be safe (within the meaning of Applicable Laws relating to product safety) and without risks to health when properly used;
  - (f) be free from defects in design, material and workmanship, and fault of any kind;
  - (g) be free from any encumbrance, charge, pledge, mortgage, lien or similar right; and
  - (h) comply in all respects with all Applicable Laws.

## 8 INSPECTION AND DEFECTIVE GOODS AND SERVICES

- 8.1 All Goods and Services will be subject to inspection by Howdens or its representative within a reasonable time following delivery or, in the case of any Services, upon completion of such Services. Without prejudice to the foregoing, Howdens and its representatives may on giving reasonable notice inspect and test the Goods and Services at your premises (or, if applicable, at the premises of any third-party, access to which you shall procure for Howdens and its representatives). All inspections and/or testing shall be conducted in accordance with Howdens' reasonable instructions.
- 8.2 Where the Goods and Services (or any aspect of them) are defective in any manner, or in any way fail to comply with their description (whether specified in the Purchase Order or otherwise) ("**Description**"), a Specification, the warranties in Clause 7, any Applicable Laws and/or any other applicable requirement ("**Defective Goods and Services**", as applicable), Howdens may reject the Defective Goods and Services.
- 8.3 If Howdens is entitled to reject any Defective Goods and Services supplied by you, Howdens may (at its option) reject the whole or only part of any Defective Goods and Services. Howdens may (at its option):
- (a) pay only for the Goods and Services Howdens accepts and terminate the Agreement in relation to the balance of any Defective Goods and Services;
  - (b) accept the Defective Goods and Services conditional upon your accepting a reduction in the Price;
  - (c) require you to rectify, replace or re-perform (as applicable) all or part of the Defective Goods and Services;
  - (d) itself rectify, replace or re-perform (as applicable) all or part of the Defective Goods and Services; and/or
  - (e) where applicable require you to collect the Defective Goods and Services.
- 8.4 Howdens shall only be required to pay for those Goods and Services that are accepted by Howdens. You shall refund any amounts pre-paid by Howdens in relation to Defective Goods and Services within seven (7) days of the date of Howdens' notice of rejection.
- 8.5 Acceptance by Howdens of the Goods and Services shall not prevent Howdens from being entitled to take any action against you in connection with any Defective Goods and Services.
- 8.6 You shall notify Howdens immediately if you become aware or suspect that you have or may have supplied Defective Goods and Services to Howdens.
- 8.7 You shall be liable to Howdens for all costs and expenses (including all applicable third-party costs and expenses) incurred by Howdens in connection with the return, rectification, replacement or re-performance of any Defective Goods and Services.

## 9 PRICE AND PAYMENT

- 9.1 The price for the Goods and Services shall be as set out in the Purchase Order ("**Price**").
- 9.2 Except where otherwise set out in the Purchase Order, Howdens will pay you the Price within 30 (thirty) days from the date of receipt of your invoice, provided that:
- (a) such invoice is issued after the delivery or completion of the supply of all Goods and Services specified in that Purchase Order;
  - (b) those Goods and Services have been provided to Howdens' satisfaction;
  - (c) where there is more than one payment, each payment shall be made no earlier than the date set out for payment in the Purchase Order;
  - (d) the invoice contains the Purchase Order number and such other information required by us; and
  - (e) the invoice is a valid VAT or equivalent sales tax invoice.
- 9.3 Unless specified otherwise, Howdens will pay VAT or equivalent sales tax on the Price (if payable) following receipt of a valid VAT or equivalent sales tax invoice. You will notify Howdens if VAT or any other sales tax is payable in addition to the Price.
- 9.4 The Price (and any applicable VAT or other sales tax) is the maximum amount payable by Howdens for the delivery of the Goods and Services under this Agreement. You will be responsible for payment of:
- (a) all costs involved in the manufacture, importation, transportation and, if relevant, storage of any Goods and other Deliverables;
  - (b) any taxes, duties or levies (including VAT, sales taxes or import duties) payable on the supply of any Goods and other Deliverables;
  - (c) any taxes, deductions, duties and charges arising from the provision of any Services, including all payments (tax, national insurance or otherwise) due to your Personnel, and you shall indemnify Howdens against any such costs, taxes, duties or levies payable on the supply of the Goods and Services.
- 9.5 If Howdens fails to pay any undisputed amount due under this Agreement within 30 (thirty) days of such due date, you shall be entitled to charge interest on all overdue undisputed amounts, from the due date until and including the date of actual payment, after as well as before judgment, accruing on a daily basis, at the rate of 2% (two per cent) per annum above the base rate for the time being of the Bank of England.

## 10 INTELLECTUAL PROPERTY

- 10.1 Except in so far as any Goods and/or Deliverables supplied under any Purchase Order are standard "off-the shelf" products supplied by you to third parties prior to the date of this Agreement and supplied to Howdens without modification, Howdens shall own all Rights in any Goods and Deliverables supplied under this Agreement.
- 10.2 You assign to Howdens with full title guarantee (including by way of present assignment of future copyright) any such Rights that become vested in you (by the operation of law or otherwise) for the full duration of such Rights.
- 10.3 To the extent that any such Rights are not assigned to Howdens by virtue of Clause 10.2, you shall hold the same in trust for and shall, at Howdens' request, immediately and unconditionally assign with full title guarantee free of charge, any such Rights to Howdens for the full duration of such Rights and execute any documents and do all acts required by Howdens for the purposes of confirming such assignment.
- 10.4 You hereby waive, and shall procure the waiver of, any and all moral rights in the Goods and Services to which you or any person involved in the supply of Goods and Services are now or may be at any future time entitled under Applicable Laws.
- 10.5 You warrant and represent that the Goods and Services do not and will not infringe any Rights of any third party. You must, at your own expense and upon Howdens' request, investigate and resolve any claim which may be made and defend or assist in defending any proceedings which may be brought against Howdens for any infringement or alleged infringement of any Rights by reason of the sale or use of any Goods and Services.
- 10.6 Except as otherwise expressly provided, nothing in this Agreement shall give you the right to use any of Howdens' Rights. If any Goods and Services which bear Howdens' trade marks, logos or branding or the branding of any third party nominated by Howdens (on Howdens' request) ("**Marked Materials**") are returned or rejected or otherwise not accepted by and/or supplied to Howdens, you must destroy or recycle (other than for supply to Howdens unless agreed by Howdens in writing) such Goods and Services and procure that any of those Goods and/or Services in the possession of third parties

are destroyed or recycled, so that those Goods and/or Services no longer contain or constitute Marked Materials.

- 10.7 You must not, without Howdens' prior written consent, represent, hold out, promote or advertise in any way that you have any connection or association with Howdens and/or any of its clients and must not describe yourself as an "official supplier" to Howdens.
- 10.8 Where Howdens provides you with any materials for your use in connection with the supply of the Goods and Services ("**Howdens Materials**"), you acknowledge that Howdens (or its licensors) shall remain the owner of all Rights in such Howdens Materials. Howdens hereby grants to you a revocable, non-exclusive, royalty free licence to use, reproduce, modify, alter and integrate the Howdens Materials solely in connection with your supply of the Goods and Services in accordance with this Agreement or otherwise in accordance with Howdens' instructions.
- 10.9 For the purposes of this Agreement, "**Rights**" means all copyright, design rights, rights in performance and other intellectual property rights in whatever media whether or not registered, including database and compilation rights, patents, trade marks, service marks, trade names, registered designs, all other industrial commercial or proprietary rights and any applications for the protection or registration of those rights and all renewals, revivals and extensions existing in any jurisdiction.

## 11 CONFIDENTIALITY

- 11.1 Except as may be required by Applicable Laws, or with the prior written consent of Howdens, you shall not at any time (during or after the term of this Agreement) use or disclose to any third party (except as required for the performance of this Agreement) any Confidential Information that is not already in the public domain (other than by breach of this Clause 11).
- 11.2 Clause 11.1 shall be without prejudice to any confidentiality agreement or NDA entered into between the parties, which shall remain in full force and effect notwithstanding anything else in this Agreement.
- 11.3 For the purposes of this Agreement:
- (a) "**Confidential Information**" means any and all information relating to Howdens and/or its Group Companies and/or its customers which is designated as confidential, by its nature is obviously confidential or ought reasonably to be considered (or is likely to be considered) to be confidential, including the terms of this Agreement, the Price, the Howdens Materials and the Goods and Services; and
- (b) "**Group Company**" means any subsidiary or parent company of Howdens and any subsidiary of any such subsidiary or parent company, in each case from time to time.

## 12 TERMINATION

- 12.1 This Agreement may be terminated by Howdens with immediate effect by giving written notice to you at any time if:
- (a) you have committed a material breach of any of the terms of this Agreement and/or any other agreement you may have with Howdens from time to time and (where such breach is capable of being remedied) shall have failed to remedy the same within 30 (thirty) days of receiving a notice specifying the breach and requiring its remedy or such shorter period as is reasonable in the circumstances;
- (b) Howdens has reasonable grounds for believing that you will not be able to supply the Goods and Services in accordance with this Agreement;
- (c) any meeting of your creditors is held or any arrangement or composition with or for the benefit of your creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to you (other than for the purposes of bona fide reconstruction or amalgamation);
- (d) a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over the whole or any substantial part of your assets;
- (e) any distress, execution or other process is levied or enforced (and is not discharged within seven days) upon the whole or any substantial part of your assets;
- (f) you cease or threaten to cease to carry on business or are or become unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986;
- (g) a resolution is passed, any procedure is commenced, any meeting is convened or any other step is taken (including the making of an application, the presentation of a petition or the

filing or service of a notice) with a view to:

- (i) you being adjudicated or found insolvent;
- (ii) your winding up or dissolution;
- (iii) you obtaining a moratorium or other protection from your creditors; or
- (iv) the appointment of a trustee, supervisor, administrative or other receiver, administrator, liquidator or similar officer or encumbrancer in respect of you or any of your assets; or
- (v) any event analogous to any of the foregoing occurring in any jurisdiction;
- (h) if you are an individual, you are insolvent or are the subject of a bankruptcy petition or order or any event occurs, or proceeding is taken, in any jurisdiction that has an equivalent or similar effect; or
- (i) any event of force majeure as set out in Clause 20.2 continues for a consecutive period of 14 (fourteen) days.
- 12.2 Howdens may terminate the supply of any one or more Services supplied under a Purchase Order at any time by giving you at least 1 months' written notice. Termination of the supply of any Services under this Clause 12.2 shall not affect the continuation of this Agreement in respect of any other Goods and Services supplied under this Agreement.
- 12.3 Howdens may terminate the supply of any one or more Goods supplied under a Purchase Order by giving you written notice at any time prior to the dispatch of such Goods. Termination of the supply of any Goods under this Clause 12.3 shall not affect the continuation of this Agreement in respect of any other Goods and Services supplied under this Agreement.
- 12.4 Without prejudice to Howdens' other rights and remedies under this Agreement, Howdens may at any time suspend the supply of Goods and Services (in whole or in part) upon giving notice to you for any reason. This may happen, for example, where a government order, rule, regulation, direction or guidance relating to COVID-19 or otherwise makes it unlawful, impossible or undesirable for Howdens to continue with the order for Goods and Services. In the event of suspension, you shall immediately cease supplying the suspended part of the Goods and Services and shall cease to incur costs and expenses in relation to the suspended part of the Goods and Services and the charges referred to in Clause 9 shall not apply during any period of suspension. You shall resume the supply of Goods and Services upon written notice from Howdens. If Howdens elects not to recommence the supply of Goods and Services for any reason, it shall be entitled to terminate this Agreement on giving written notice to you. Howdens shall not be deemed to be in breach of this Agreement in the circumstances set out in this Clause 12.4 and (subject to Clause 13.1(d)) you shall not be entitled to be paid the Price or otherwise to recover any damages, costs, losses or otherwise from Howdens as a result.

## 13 EFFECTS OF TERMINATION

- 13.1 On the expiry or earlier termination of this Agreement:
- (a) you shall be under no further obligation to supply the Goods and Services to Howdens and Howdens shall be under no obligation to accept the supply of the Goods and Services;
- (b) you shall return to Howdens all Howdens Confidential Information, Howdens Materials and other property in your possession or control;
- (c) you shall delete all Howdens Confidential Information from your IT systems; and
- (d) Howdens shall only be required to pay for the Goods and Services accepted by Howdens (and supplied in accordance with this Agreement) at the date of notice of termination.
- 13.2 The expiry, termination or suspension of this Agreement shall not affect any other agreement made between you and Howdens and such other agreement(s) shall remain in full force and effect.
- 13.3 The expiry, termination or suspension of this Agreement shall not affect a party's accrued rights and obligations at the date of such expiry, termination or suspension.
- 13.4 Any Clauses in this Agreement that are expressly stated, or by implication intended, to apply after expiry or termination of this Agreement shall continue in full force and effect after such expiry or termination, including Clauses 7 (Warranties), 8 (Inspection and Defective Goods and Services), 9 (Price and Payment), 10 (Intellectual Property), 11 (Confidentiality), 13 (Effects of Termination), 15 (Insurance), 16 (Liability), 17 (Data Protection), 18 (TUPE), 19 (Tax) and 20 (General).

## 14 CHANGES

- 14.1 Without prejudice to Howdens' other rights and remedies under this Agreement, if Howdens' requirements for the Goods and Services

change prior to the Delivery Date, the parties will, acting in good faith, negotiate any changes to be made to the Goods and Services and, if relevant, changes to the Price, Delivery Address and Delivery Date. If the parties are unable to agree such changes within a reasonable period (not to exceed seven (7) days), Howdens shall be entitled to terminate this Agreement with immediate effect and shall, if applicable, pay you in accordance with Clause 13.1(d).

## 15 INSURANCE

- 15.1 You will (at your cost) enter into and thereafter maintain at all times prior to and for a period of two (2) years following completion and/or final delivery of the Goods and Services a comprehensive insurance policy and/or policies free from restrictions or excess with a reputable insurance company or companies to cover liability for any claim which may at any time be made in connection with this Agreement or otherwise in connection with the Goods and Services, which insurance shall cover any claim which may at any time be made in connection with this Agreement, including:
- (a) public liability/third party insurance with a minimum cover per claim of not less than £1,000,000 (one million pounds);
  - (b) employer's and occupier's liability insurance with a minimum cover per claim of not less than £1,000,000 (one million pounds); and
  - (c) if set out in the Purchase Order professional indemnity insurance with a minimum cover per claim of not less than £1,000,000 (one million pounds).
- 15.2 You shall procure that the interest of Howdens is noted on the policies referred to in Clause 15.1, if requested by Howdens.
- 15.3 You shall provide to Howdens within seven (7) days of request a copy of the certificates of insurance confirming the details of the cover provided and the payment of the applicable premiums.

## 16 LIABILITY

- 16.1 You shall indemnify Howdens and its Group Companies and keep Howdens and its Group Companies indemnified from and against all direct and indirect liabilities, claims, actions, proceedings, loss, damage, costs or expenses (including reasonable legal fees and expenses) suffered or incurred by Howdens and/or its Group Companies in consequence or arising out of:
- (a) any breach or non-performance of all or any of the covenants, warranties, representations, obligations, undertakings or agreements on your part contained in this Agreement;
  - (b) any third-party claim arising as a result of any alleged defect, fault or failure:
    - (i) in the manufacture and supply of the Goods and Services;
    - (ii) in the Goods and Services themselves; or
    - (iii) in the use of the Goods and Services.
- 16.2 Subject to Clause 16.4, Howdens shall have no liability to you whatsoever, whether such liability arises in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
- (a) direct or indirect:
    - (i) loss of profits;
    - (ii) loss of contracts;
    - (iii) loss of business;
    - (iv) loss of goodwill;
    - (v) loss or corruption of data; or
  - (b) indirect or consequential loss or damage, even if Howdens has been advised of the possibility of such damages or losses (provided that nothing in this clause 16.2(b) shall be deemed to limit or exclude Howdens' liability for direct loss or damage).
- 16.3 Subject to Clause 16.4, Howdens shall not in any event be liable to return monies received or pay compensation or damages to you or any third party (for whatever reason such compensation or damages may be due whether in contract, tort (including negligence), breach of statutory duty or otherwise) in excess of the Price due but not yet paid at the date such action or claim arises.
- 16.4 Nothing in this Agreement shall limit or exclude either party's liability for:
- (a) personal injury or death caused by negligence or any intentional act or omission;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any indemnity set out in this Agreement;

- (d) Howdens' deliberate personal repudiatory breaches of this Agreement;
- (e) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979;
- (f) defective products under the Consumer Protection Act 1987; or
- (g) any liability that cannot be limited or excluded as a matter of Applicable Laws.

- 16.5 Howdens' rights and remedies set out in this Agreement are in addition to, and do not in any way limit or exclude, the statutory conditions implied in favour of Howdens by those Applicable Laws relating to the sale of Goods and the supply of Services.

## 17 DATA PROTECTION

- 17.1 Both parties shall comply with all applicable requirements of the Data Protection Laws. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.
- 17.2 It is not envisaged that you will process personal data on Howdens' behalf, however, in the event you do, you shall:
- (a) process the personal data only on documented instructions from Howdens, or as communicated in writing to you from time to time, and you shall not process the personal data for any other purpose;
  - (b) ensure that all Personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - (c) ensure that you have in place appropriate technical and organisational measures 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);
  - (d) only engage another processor with Howdens' prior specific written consent and, if Howdens consents, by entering into a legally binding written agreement that places the same data protection obligations as those set out in this clause on the other processor, provided that if the other processor fails to fulfil its data protection obligations you shall remain fully liable to Howdens for the performance of that other processor's obligations;
  - (e) taking into account the nature of the processing, assist Howdens by appropriate technical and organisational measures, insofar as possible, to respond to requests from data subjects for access to or rectification, erasure, portability, restriction of processing or objections to processing of their personal data;
  - (f) provide such assistance as Howdens may reasonably require to allow it to comply with its obligations as a data controller under Data Protection Legislation in relation to the personal data including its obligations relating to the security of processing, notification of personal data breaches or the need to conduct data protection impact assessments;
  - (g) make available to Howdens all information necessary to demonstrate compliance with the obligations in this clause and allow for and contribute to audits, including inspections, conducted by Howdens or another auditor mandated by Howdens;
  - (h) notify Howdens, via email and telephone, without undue delay, and in any event within twenty-four (24) hours, of becoming aware of, or having reasonable grounds to suspect, any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, such personal data;
  - (i) not transfer personal data outside the United Kingdom or European Union without the prior written consent of Howdens; and
  - (j) at the written direction of Howdens, delete or return personal data and copies thereof to Howdens on expiry of termination of this Agreement unless required by Data Protection Laws to store the personal data.
- 17.3 For the purposes of this Agreement:
- (a) "**Data Protection Laws**" means any applicable data protection related laws and regulations, as amended, extended or re-

enacted from time to time, including the following: (i) Data Protection Act 2018 and the UK GDPR (as defined in the Data Protection Act 2018); (ii) EC Directive 2002/58/EC on Privacy and Electronic Communications; (iii) EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"); (iv) all local laws or regulations implementing or supplementing the EU legislation mentioned in (ii) and (iii) above; and (v) all codes of practice and guidance issued by national regulators relating to the laws, regulations and EU legislation set out in (i)–(iv) above; and

- (b) the terms "controller", "data subject", "personal data", "personal data breach", "process" and "processor" have the meanings given in the Data Protection Laws.

## 18 TUPE

18.1 The parties do not anticipate that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended and/or replaced from time to time) ("TUPE") will apply so as to transfer any employees from you to Howdens and/or a replacement supplier of Howdens ("New Supplier") on termination of this Agreement. If, notwithstanding the parties' intention that TUPE will not apply, it is found or alleged that the employment of any person transfers to Howdens or a New Supplier on or after the date or dates on which there is a transfer of responsibility for the provision of any Services under this Agreement from you to Howdens and/or a New Supplier (as the case may be) pursuant to TUPE:

- (a) Howdens shall notify you, or shall procure that the New Supplier notifies you of that finding or allegation as soon as reasonably practicable after becoming aware of it;
- (b) in consultation with Howdens, you shall within 14 (fourteen) days of becoming aware of that allegation or finding make that person a written offer of employment to commence immediately on the same terms and conditions as that person was employed prior to the transfer (actual or alleged), and under which you agree to recognise that employee's prior service with you and Howdens shall (and shall procure that the New Supplier shall) give all reasonable assistance requested by you to persuade that person to accept the offer;
- (c) Howdens or a New Supplier may, within 28 (twenty-eight) days after becoming aware of that finding or allegation, if that person is still an employee of Howdens or the New Supplier and has not accepted an offer of employment with you, dismiss that person; and
- (d) you shall indemnify Howdens and its Group Companies and keep Howdens and its Group Companies indemnified (including for a New Supplier) from and against liabilities, claims, actions, proceedings, loss, damage, costs or expenses (including reasonable legal fees and expenses) suffered or incurred by Howdens and/or its Group Companies and/or a New Supplier in relation to that dismissal and the employment of that person up to the date of that dismissal and any other claim brought by that person in each case provided Howdens, its Group Companies and the New Supplier take reasonable steps to minimise such liabilities, claims, actions, proceedings, loss, damage, costs or expenses.

## 19 TAX

19.1 The parties agree that any Services provided under any Purchase Order do not, and shall not, consist of any individual personally performing, or being under an obligation to personally perform, services for Howdens for the purposes of the IR35 Legislation. For the purposes of this Agreement, "IR35 Legislation" means in relation to an individual supplying services through an intermediary as defined in sub-sections 61N(9), (10) and (11) Income Tax (Earnings and Pensions) Act 2003 (including but not limited to a personal services company), the relevant provisions of the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000.

19.2 Personnel engaged by you in the provision of any Services under any Purchase Order are not employees, workers or agents of Howdens or its Group Companies and nothing in this Agreement should be construed as giving rise to an employment, worker or agency relationship with Howdens or its Group Companies. You assume full responsibility for the acts of such personnel.

19.3 Howdens and its Group Companies shall not be responsible for making any payments (including any statutory payments) to the

personnel engaged by you in the provision of any Services under any Purchase Order. In addition, Howdens and its Group Companies shall not be responsible for making any tax, national insurance contributions or other deductions from the payments made to such personnel or for making any payments of employers' national insurance contributions or the apprenticeship levy in respect of or relating to such personnel (including but not limited to under the IR35 Legislation).

19.4 You warrant and undertake that all personnel engaged in the provision of any Services under any Purchase Order are employed by you, and/or that for all purposes (including but not limited to the IR35 Legislation), you are solely responsible for all payments (including any statutory payments) to such personnel and/or any tax, national insurance contributions or other deductions from the payments made to such personnel. You also warrant and undertake that you are solely responsible for any employer national insurance contributions and the apprenticeship levy in respect of or relating to any payments made to such personnel. For the avoidance of doubt, you warrant that you are solely responsible (for the purposes of the IR35 Legislation and under this Agreement) for performing any status determination in respect of such personnel and issuing Status Determination Statements under the IR35 Legislation.

19.5 You shall indemnify Howdens and its Group Companies and keep Howdens and its Group Companies indemnified from and against any and all liabilities, claims, actions, proceedings, loss, damage, costs or expenses (including reasonable legal fees and expenses) suffered or incurred by Howdens, or which may be brought, made or incurred by any third party (including HM Revenue and Customs and any successor, equivalent or related body ("HMRC")) against Howdens and/or its Group Companies pursuant to the IR35 Legislation. For the avoidance of doubt, this includes any and all claims and demands made by HMRC against Howdens in respect of any income tax (whether under PAYE or otherwise), apprenticeship levy or national insurance contributions in respect of sums payable by Howdens and/or its Group Companies to you and/or by you to the personnel engaged by you in the provision of any Services under any Purchase Order and against any interest or penalties imposed in connection with any such tax, levy or contributions. You agree that Howdens may, at its option, satisfy such indemnity in whole or in part by way of deduction from any amounts payable to you pursuant to this Agreement.

## 20 GENERAL

20.1 **Assignment and Subcontracting:** Howdens may at any time assign, transfer or charge all or any of its rights and/or obligations under this Agreement or sub-contract the performance of any of its obligations under this Agreement. You shall not assign, transfer or charge all or any of your rights and/or obligations to third parties, whether in whole or in part, without Howdens' prior written consent. You shall not subcontract the performance of any of your obligations under this Agreement without Howdens' prior written approval.

20.2 **Force Majeure:** Neither party shall be liable for its inability to perform any obligation under this Agreement where such inability is caused by civil war, riot, revolution, act(s) of terrorism, sabotage, storm, earthquake, flood, explosion, fire, labour disputes or strikes, act(s) of government or by any other cause not within the reasonable control of the party claiming to be affected. You will:

- (a) notify Howdens as soon as you become aware that any such force majeure event will or may affect your ability to supply the Goods and Services under this Agreement;
- (b) use your reasonable endeavours to minimise or avoid the effect of any such force majeure event on the performance of your obligations under this Agreement; and
- (c) discuss with Howdens in good faith alternative supplies and/or methods to meet your obligations under this Agreement.

20.3 **Time of the Essence:** Each date, time or period referred to in this Agreement in relation to your obligations under this Agreement is of the essence (unless agreed otherwise in writing). If the parties agree in writing to vary such a date, time or period, the varied date, time or period is of the essence.

20.4 **No Partnership:** Nothing in this Agreement shall be construed as constituting an employment relationship, partnership, joint venture or relationship of principal and agent between Howdens and you.

20.5 **Invalidity:** If any provision of this Agreement is invalid or unenforceable in any jurisdiction it will be deleted (for the purposes of that jurisdiction only) provided that such deletion does not affect:

- (a) the remaining provisions of this Agreement;
- (b) the validity or enforceability of that provision in any other jurisdiction; and
- (c) does not defeat the commercial purpose of this Agreement.

- 20.6 **Entire Agreement:** This Agreement sets out the entire agreement and understanding between the parties and supersedes all previous agreements and arrangements between the parties with regard to such transactions.
- 20.7 **Waiver:** No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by either party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 20.8 **Amendment:** Howdens may amend these General Conditions of Contract from time to time in its absolute discretion. However, any such changes shall not affect any Purchase Order that was agreed prior to the date of such changes and such Purchase Order shall remain subject to the version of these General Conditions of Contract in force at the time the relevant Purchase Order was agreed. Subject to the foregoing and Clause 14, no provision of this Agreement may be amended, waived, modified, discharged or terminated otherwise than by the express written agreement of both parties nor may any breach of any provision of this Agreement be waived or discharged except with the express written consent of the party not in breach.
- 20.9 **Rights Cumulative:** The rights and remedies in this Agreement are cumulative and not exclusive of any rights and remedies provided by Applicable Laws.
- 20.10 **Third Party Rights:** No term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 (or otherwise) by any person who is not a party to this Agreement.
- 20.11 **Costs:** Each party shall be responsible for its own legal and other costs incurred in relation to the negotiation, preparation and execution of this Agreement.
- 20.12 **Notices:** The parties agree that any notice or other communication under this Agreement shall be delivered by hand, by registered mail or by email (sent with a delivery receipt request) to the other party's address as set out in the Purchase Order (or such address as advised in writing from time to time). Such notice shall be treated as having been given and received:
- (a) if delivered by hand, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (b) if sent by registered mail, on the date of receipt; and
  - (c) if sent by email, at the time recorded in the delivery receipt if before 5:00 pm on a Business Day, otherwise at 9:00 am on the next Business Day.
- For the purposes of this Agreement, "**Business Day**" means any day other than a Saturday, Sunday or a day which is a public holiday in England.
- 20.13 **Anti-Bribery:** You shall, and shall ensure that your Personnel shall, at all times comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery, anti-corruption and related matters, including the Bribery Act 2010 ("**Anti-Bribery Provisions**"). In particular, you shall:
- (a) not offer, give or agree to give to any employee, representative or third party (including but not limited to any government officials, representatives of public authorities or their associates, families or close friends) any gift, benefit or other advantage (monetary or otherwise): (i) to which the recipient is not legally entitled; and/or (ii) which is intended to or would result in the improper performance by the recipient of his or her job or function. Improper performance will include (but not be limited to) inducing the recipient: not to take any course of action; or to not perform his or her role in good faith, with impartiality or in accordance with relevant expectations (with respect to the negotiation, conclusion or the performance of any agreement or otherwise);
  - (b) comply, and shall procure that your Personnel shall comply, with Howdens' Anti-Bribery and Corruption Policy (as amended from time to time);
  - (c) maintain in place throughout the term of this Agreement your own policies and procedures (which shall be no less rigorous than Howdens' own Anti-Bribery and Corruption Policy in all material respects) to ensure compliance with the Anti-Bribery Provisions and enforce such policies and procedures where necessary; and
  - (d) immediately notify Howdens should you become aware of any actual or suspected breach of this Clause 20.13 and/or the Anti-Bribery Provisions.
- 20.14 **Anti-Slavery:** You shall, and shall procure that your Personnel shall, at all times comply with Anti-Slavery Law and you shall

ensure that Slavery is not taking place in your supply chains. In this Clause 20.14, "**Anti-Slavery Law**" means all Applicable Laws relating to the prevention, prohibition and/or outlawing of Slavery in the UK (including the Modern Slavery Act 2015) and any other jurisdiction relevant to the performance of this Agreement (and "**Slavery**" means all forms of modern slavery, human trafficking, forced labour, child labour, involuntary servitude and debt bondage). In particular, you shall:

- (a) maintain in place throughout the term of this Agreement policies and procedures to ensure compliance with Anti-Slavery Law in your business and supply chain, copies of which you shall make available to Howdens on request at any time throughout the term of this Agreement; and
  - (b) immediately notify Howdens should you become aware of any actual or suspected breach of this Clause 20.14 and/or Anti-Slavery Law.
- 20.15 **Anti-Tax Evasion:** You shall:
- (a) not, and shall procure that your Personnel shall not, engage in any activity, practice or conduct which would constitute a tax evasion facilitation offence under section 45(1) or section 46(1) of the Criminal Finances Act 2017;
  - (b) maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including your Personnel) and to ensure compliance with this Clause 20.15. The meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017; and
  - (c) immediately notify Howdens should you become aware of any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement.
- 20.16 **Audit:** If Howdens reasonably considers that there has been a breach of any of Clauses 20.13 to 20.15 (inclusive), you shall provide to Howdens such reasonable information necessary to demonstrate compliance with the obligations in these Clauses and on receiving reasonable notice from Howdens allow for and contribute to audits and/or inspections reasonably requested by Howdens and/or its representatives (including any third party partners).
- 20.17 **No Exclusivity:** Your engagement to supply the Goods and Services is made on a non-exclusive basis. Howdens shall be entitled to obtain goods and services that are the same as or similar to the Goods and Services from any other source at any time, whether during or after this Agreement.
- 20.18 **Conflict:** If there is a conflict between a Purchase Order and these General Conditions of Contract, then unless the Purchase Order expressly states otherwise, the provisions of these General Conditions of Contract shall take precedence to the extent necessary to resolve the conflict.
- 20.19 **Interpretation:** In this Agreement, unless the context otherwise requires:
- (a) a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision;
  - (b) words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa;
  - (c) a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (d) "**includes**" or "**including**" means includes or including without limitation and terms such as "**for example**" and "**in particular**" shall be construed as illustrative and shall not limit the sense of the words, description, definition or term preceding those terms;
  - (e) headings are inserted for convenience only and will not affect the interpretation of this Agreement; and
  - (f) references to a "**party**" or to "**parties**" shall mean a party or parties to this Agreement, their successors and permitted assignees.
- 20.20 **Governing Law and Jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement.