



MAXIBRITE LIMITED: GENERAL CONDITIONS OF CONTRACT FOR THE PROVISION OF CONSULTANCY SERVICES

1.

In these Conditions of Contract unless the context otherwise requires:-

1.1 "**Maxibrite**" means Maxibrite Limited (Company registration number 00731607) with the registered address West Terrace, Esh Winning, Durham, County Durham, DH7 9PT or the subsidiary company and defined by section 1159 of the Companies Act 2006 or ancillary organisation of Maxibrite on whose behalf the Contract is made;

1.2 "**Consultant**" means the person, firm, company or other entity with whom the Contract is made.

1.3 "**Contract**" means the agreement between Maxibrite and the Consultant for the execution of the Services comprising either:-

1.3.1 The invitation to tender issued by Maxibrite, the Consultant's tender (together with any documents and drawings referred to therein) and Maxibrite's acceptance thereof or, in the case of a term contract, any call-off order by Maxibrite in accordance therewith; or

1.3.2 Maxibrite's offer and the Consultant's acceptance thereof; whether made (wholly or in part) orally or in writing and together in either case with these Conditions of Contract, any special conditions and any specification or other document incorporated in the Contract by express reference.

1.4 "**Services**" mean the services set out in the Scope of Works or detailed on the purchase order provided by the Maxibrite to the Consultant, to be supplied by the Consultant under the Contract.

1.5 "**Contract Rates**" means the rates stated in the Contract, or as otherwise determined by the Supervising Officer in accordance with these Conditions of Contract, to be paid by Maxibrite to the Consultant for the Services.

1.6 "**Personal Data**" has the same meaning as the term 'personal data' under the Data Protection Act 1998.

1.7 "**Supervising Officer**" means the person for the time being or from time to time nominated by Maxibrite to supervise the Contract.

1.8 "**Site**" means the area on, through, under or over which the Services are, from time to time, to be carried out.

1.9 "**Works**" means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

1.10 "**Intellectual Property Rights**" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trademarks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future.

1.11 "**Loss**" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made.

1.12 "**Hargreaves Group**" means Maxibrite and its subsidiaries from time to time and the ultimate holding company (if any) of Maxibrite and every other subsidiary of the same ultimate holding company (if any) from time to time (and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006);

1.13 "**Variation Order**" means a written order made by the Supervising Officer under Condition 9.

The headings of these Conditions of Contract shall not affect the interpretation thereof.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

2.

The Contract and the documents referred to herein set out the entire Contract between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of this Contract, whether written or oral. For the avoidance of doubt, this Contract shall expressly exclude any standard terms and conditions of purchase that the Consultant may purport to apply under this Contract. Each party acknowledges that in entering into this Contract it is not relying upon any representation, warranty, promise or assurance made or given by the other party or any other person in any form whatsoever which is not expressly set out in the Contract.

3.

The Supervising Officer may from time to time delegate any of the powers, discretions, functions and authorities vested in him by appointing a representative to watch and supervise on his behalf the carrying out of the Services. Any such appointment shall be made in writing to the Consultant and signed by the Supervising Officer and shall specify the powers, discretions, functions and authorities thereby delegated and the persons appointed.

4.

4.1 The Consultant shall carry out the Services with all due skill, care, diligence and ability in accordance with the Contract and to the satisfaction of the Supervising Officer. The Consultant shall use his best endeavours to promote the interests of Maxibrite.

4.2 The Consultant shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as Maxibrite may require.

4.3 Unless specifically authorised to do so by Maxibrite in writing, the Consultant shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of Maxibrite; or
- (b) hold himself out as having authority to bind Maxibrite.

4.4 The appointment of the Consultant shall commence from the date agreed in the Contract or in the absence of such an expressed date/time, from the date/time when the Consultant shall have begun to perform for Maxibrite any of the Services.

5.

5.1 The Consultant hereby assigns to Maxibrite all existing and future Intellectual Property Rights in the Works and all materials embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under the Contract, the Consultant holds legal title in such rights and inventions on trust for Maxibrite.

5.2 The Consultant undertakes:

- (a) whenever requested to do so by Maxibrite and in any event on the termination of the Contract, promptly to deliver to Maxibrite all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in the Consultant's possession, custody or power;
- (b) not to register nor attempt to register any of the Intellectual Property Rights in the Works, unless requested to do so by Maxibrite; and
- (c) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works has passed, or will pass, to Maxibrite.

5.3 The Consultant warrants to Maxibrite that:

- (a) he has not given and will not give permission to any third party to use any of the Works nor any of the Intellectual Property Rights in the Works;
- (b) he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by Maxibrite will not infringe the rights of any third party.

5.4 The Consultant waives any moral rights in the Works to which he is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials, infringes the Consultant's moral rights.

5.5 The Consultant acknowledges that no further fees or compensation other than those provided for in the Contract are due or may become due to the Consultant in respect of the performance of his obligations under this Condition 5.

5.6 The Consultant undertakes, at the expense of Maxibrite, at any time either during or after the term of the Contract, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of Maxibrite, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of Maxibrite and to defend Maxibrite against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works.

5.7 The Consultant hereby irrevocably appoints Maxibrite to be his attorney to execute and do any such instrument or thing and generally to use his name for the purpose of giving Maxibrite or its nominee the benefit of this Condition 5.

5.8 The Consultant warrants to Maxibrite that to the extent it processes any Personal Data in connection with the provision of the Contract, it shall comply with the provisions of the Data Protection Act 1998.

6.

6.1 The Consultant shall be required to take out professional indemnity and public liability insurance in respect of the professional services to be provided. Where values are not expressly stipulated in the Contract such levels of professional indemnity and public liability insurance reasonably expected of that type of business generally, shall be inferred.

6.2 The Consultant shall indemnify, keep indemnified and hold Maxibrite harmless against any and all Loss suffered or expenditure incurred by Maxibrite arising out of the death of or injury to any person or out of the damage to any property, including without limitation property of Maxibrite or any third party, to the extent that such death, injury or damage is caused by breach of contract, negligence or breach of statutory duty by the Consultant, his employees, agents or sub-contractors or breach of statutory duty on the part of Maxibrite to the extent that it results from any such mitigation act or omission of the Consultant, his employees, agents or sub-contractors.

6.3 The Consultant shall not be liable under the provisions of Condition 6.2 for any loss of profits or of contracts sustained by Maxibrite and the liability of the Consultant to indemnify Maxibrite in respect of damage to the property of Maxibrite or any third party shall be limited to £5,000,000 (Five million pounds sterling) in respect of any one cause or incident.

6.4 The Consultant shall insure his liabilities under Condition 6.2 with an insurer approved by Maxibrite in a sum of not less than £5,000,000 in respect of any one incident or matter and shall if required by Maxibrite from time to time produce satisfactory evidence that the policy or policies of insurance have been effected and maintained in force. The Consultant shall ensure that such insurance policy or policies are taken out with reputable insurers acceptable to Maxibrite and that the level of cover and other terms of insurance are acceptable to and agreed by Maxibrite. The approval by Maxibrite of the insurance of the Contractor shall not in any way limit or relieve the Consultant of his liabilities under the Contract.

6.5 Damage to property for the purpose of this Condition 6 includes without limitation any Loss arising out of or caused by the release of contaminants or pollutants.

7.

The Consultant shall at his own expense observe and perform the Services in accordance with all reasonable standards of safety and comply with Maxibrite's health and safety procedures from time to time in force, including without limitation the conditions set out in the document Health & Safety Provision to apply to all Contracts on Maxibrite's premises/Company Directive 7/64, and shall report to Maxibrite any unsafe working conditions or practices.

8.

8.1 The Contract Rates, as varied by Condition 10 hereof, shall be used to calculate the value of the Services supplied in accordance with Condition 8 by measurement of the work done or by reference to the materials supplied and hours worked (as applicable).

8.2 Except where agreed by Maxibrite in writing, the Contract Rates shall be inclusive of:-

- 8.2.1 All services, plant, equipment, cost of materials, packing, transport (including loading, unloading, freight, insurance and labour charges);
- 8.2.2 All overtime payments necessary to complete the Services by the stated time for completion;
- 8.2.3 All payments in respect of labour, including where applicable lodging and travelling allowances, necessary to recruit and maintain an adequate labour force.

9.

9.1 At the end of each Accounting Period (as set out in Form of Tender Part IV or as otherwise notified by Maxibrite to the Consultant) the Consultant shall be entitled to claim payment in respect of the Services provided. The Consultant shall submit an invoice to Maxibrite for the Services provided during each Accounting Period calculated pursuant to Condition 8.

9.2 Maxibrite shall pay the sum to which the invoice relates within thirty (30) days of the end of the month following the month in which the property rendered invoice was received by Maxibrite.

9.3 Maxibrite shall be entitled to deduct from the sums due under the Contract (and any other sums) due to the Consultant any sums that the Consultant may owe to Maxibrite at any time.

9.4 If there is any invoice which is in dispute (whether in whole or part), Maxibrite shall be entitled to withhold payment of the relevant invoice in full. The parties shall enter into good faith discussions to resolve such dispute.

9.5 If Maxibrite fails to make payment to the Consultant of any sums owed, the Consultant may charge interest to Maxibrite on such sums at a rate of 2% (two per cent) above the base lending rate from time to time of the Bank of England until such payment has been made. Interest shall not be payable on any unpaid sums under Conditions 9.3 and 9.4 above.

9.6 Payment of the price for the Services shall not constitute acceptance by Maxibrite of the Services.

10.

10.1 The Supervising Officer may require to vary the Services to be provided under the Contract. The value of any Variation Order shall be added to or deducted from the price payable under the Contract, and shall be calculated in accordance with the Schedule of Prices at Form of Tender Part II or as otherwise agreed between the parties. No variation shall invalidate the Contract nor shall it entitle the Consultant to any compensation for loss of profit in respect of work which may no longer be required nor to any other payment except as provided for in the Variation Order.

10.2 Maxibrite shall not entertain any claim whatsoever from the Consultant for payments other than those provided for in the Contract, unless such payments are authorised by Maxibrite by Variation Order.

10.3 Wherever possible a fixed price Variation Order shall be agreed prior to the commencement of any varied Services and the Consultant shall provide adequate details, in substantiation of any proposed variation.

11. The Contract Rates are deemed to exclude Value Added Tax ("VAT"). Maxibrite shall pay in addition to the Contract Rates such VAT as is properly chargeable on the supply to Maxibrite of

the Services under the Contract.

12.

12.1 If the Consultant shall fail either to proceed with due diligence in the provision of the Services, or to carry out any reasonable orders given to him by the Supervising Officer and the Supervising Officer shall give the Consultant notice, in writing, of such failure and if within fourteen (14) days of such notice having been given the Consultant or shall not have taken adequate steps to rectify such failure in Maxibrite's reasonable opinion, then without prejudice to any other rights of Maxibrite:

12.2 Maxibrite shall be entitled to complete the Services or remedy the defective Services themselves or have the Services completed or remedied by a third party; and

12.3 Maxibrite shall not be liable to make any further payments to the Consultant in respect of the defective or outstanding Services and may deduct the cost of remedying the defective Services or completing the Services from any price due to the Consultant in accordance with Condition 13; and

12.4 all additional expenditure properly incurred by Maxibrite in connection therewith shall be recoverable by Maxibrite from the Consultant.

13. Whenever under the Contract any sum of money is recoverable from or payable by the Consultant, the same may be deducted from or reduced by the amount of any sum then due or which at any time may become due to the Consultant under the Contract or any other dealing with Maxibrite.

14.

14.1 The Consultant shall indemnify, keep indemnified and hold Maxibrite against any and all Losses arising from or incurred by reason of any infringement or alleged infringement of Intellectual Property Rights by the use of sale of any article or material supplied by the Consultant to Maxibrite but such indemnity shall not cover any use of such article or material otherwise than for the purpose indicated by or reasonably to be inferred from the Contract.

14.2 Maxibrite warrants that any design or instruction from furnished or given by Maxibrite shall not be such as will cause the Consultant to infringe any Intellectual Property Right in the execution of the Services.

15.

15.1 The Consultant agrees that he will not at any time hereafter use, divulge or communicate to any other person, nor allow to be used, divulged or communicated, save with the consent of Maxibrite, any information concerning any aspect of this Contract, or the contents of any drawings, reports, specification, bill of quantities, calculations or other similar documents relating to the Services or any other dealings, transactions or affairs of Maxibrite, which may come to his knowledge or into his possession and that he shall use his best endeavours to prevent the publication or disclosure of any such items of information.

15.2 The obligations of the Consultant contained in Condition 15.1 do not apply to any Confidential Information which is:-

15.2.1 already known to the Consultant prior to the commencement of the Services (but, for the avoidance of doubt, this exception shall not apply to Confidential Information which becomes known to the Consultant during the course of any previous discussions, negotiations or relationship with Maxibrite); or

15.2.2 published or otherwise comes into the public domain otherwise than in consequence of a breach of these terms and conditions by the Consultant or a breach of confidence by a third party; or

15.2.3 received from a third party lawfully entitled to supply the same; or

15.2.4 developed by the Consultant at any time independently of the Confidential Information disclosed to it by Maxibrite.

16. The Consultant shall not, without the previous written consent of Maxibrite, publicly announce or advertise in any form that he supplies goods or services to Maxibrite.

17.

17.1 Maxibrite shall have the right at any time by giving notice in writing to the Consultant to terminate the Contract forthwith:-

17.1.1 If the Consultant commits a material breach of any of the terms and conditions of the Contract;

17.1.2 If the Consultant repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

17.1.3 the Consultant, irrespective of its status and in any jurisdiction:

(a) suffers actions analogous to those described in Conditions 17.1.4 to 17.1.7;

(b) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

17.1.4 the Consultant, being an individual or a partnership:

(a) suspends, or threatens to suspend, payment of its debts or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986;

(b) makes, or proposes to make, an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;

(c) is, or proposes to become, the subject of a bankruptcy petition or order; or

(d) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or becomes a patient under any mental health legislation;

17.1.5 the Consultant, being a company or limited liability partnership:

(a) has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with its winding up or such other circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in respect of the Consultant;

(b) has an application made to court, or an order made, for the appointment of an administrator, or has a notice of intention to appoint an administrator given by the other Party or its directors or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or has an administrator appointed over it;

(c) has a receiver appointed over any of its assets or undertaking or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Consultant or if any other person takes possession of or sells the Consultant's assets;

(d) has a floating charge holder over its assets becoming entitled to appoint or has an administrative receiver appointed;

(e) makes, or proposes to make, any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

(f) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(g) is, or is reasonably considered by Maxibrite to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986 (on the basis that the words "it is proved to the satisfaction of the court that" are deemed omitted from sections 123(1)(e) and 123(2) of that Act);

17.1.6 any distraint is levied against the Consultant or its property by any third party provided always that such event is material in nature and not remedied or corrected within a reasonable period of time;

17.1.7 a creditor or encumbrancer of the Consultant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or against, the whole or any part of its assets and such attachment or process is not discharged within a reasonable period of time; or

17.1.8 Maxibrite, acting reasonably, has serious doubts as to the Consultant's solvency.

17.2 Maxibrite may terminate the Contract at any time by giving fourteen (14) days notice in writing to the Consultant.

17.3 The rights of Maxibrite under this Condition 17 are without prejudice to any other rights that it might have at law to terminate the Contract or to accept any breach of the Contract on the part of the Consultant as having brought the Contract to an end. Any delay by Maxibrite in exercising its rights to terminate shall not constitute a waiver thereof.

18.

18.1 Upon termination of the Contract for whatever reason the Consultant shall deliver up to Maxibrite all records reports documents papers and other materials whatsoever originated by or on behalf of the Consultant during the performance of the Services and all items in which copyright subsists and copies thereof in his possession power custody or control at that time and shall do all such acts and things and shall execute all such deeds and documents as Maxibrite's legal advisers may require to transfer and assign to Maxibrite the property and intellectual property in such items and the Consultant shall not thereafter utilise or exploit the same in any way whatsoever.

18.2 Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and in particular without limitation the right to recover damages against the other and all provisions which are expressed or implied to survive the termination of the Contract shall remain in force and effect.

19.

19.1 The Consultant shall not assign the whole or any part of the Contract or any interest in it without prior written consent of Maxibrite.

19.2 The Consultant shall not sub-contract the execution of the whole or any part of the Contract without the prior written consent of Maxibrite and such consent shall not relieve the Consultant from any liability or obligation under the Contract.

20.

20.1 Any notice to be served on Maxibrite under these Conditions of Contract shall be in writing and shall either be sent by recorded delivery post, facsimile or email to or left at the address from which Maxibrite's offer of contract was issued.

20.2 Any notice to be served on the Consultant under these Conditions of Contract shall be sent by recorded delivery post facsimile or email or left at the last known address of the Contractor.

20.3 Any notice sent under this Condition shall be deemed to have been served as follows:-

20.3.1 In the case of a notice left at or facsimile or email sent to Maxibrite or the Consultant premises on the first business day following such delivery; and

20.3.2 In the case of a notice sent by recorded delivery post on the third business day after the day on which it was posted.

20.4 For the purpose of this Condition the expression "business day" means any day other than a Saturday, Sunday or any other day which is a public holiday in the place to which such notice is sent or left.

21. The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of England, and the English courts shall have exclusive jurisdiction in all matters relating to the Contract (whether of a contractual or tortious nature or otherwise).

22.

22.1 The Consultant will ensure that the contents of these Conditions of Contract where relevant are brought to the attention of and observed by his employees, agents and sub-contractors and their employees and agents.

22.2 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

22.3 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.

22.4 The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

22.5 Other than members of the Hargreaves Group, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. Maxibrite may perform any of its obligations or exercise any of its rights hereunder through any member of the Hargreaves Group. Notwithstanding that members of the Hargreaves Group shall be entitled to enforce certain rights under this Contract which have been given for their benefit, the parties to this Contract may enter into any agreement or arrangement varying or amending any of the terms of this Contract, or compromising or settling any claim under this Contract (including in respect of such rights), without reference to the interests of, or the consent of, the other members of the Hargreaves Group not party to this Contract.

22.6 Save as expressly set out elsewhere in the Contract, no variation of this Contract shall be binding upon the parties unless the same shall be in writing signed by a duly authorised representative of both Maxibrite and the Consultant and such variation shall be particular to the circumstances mentioned by such writing and shall not be regarded as a general variation.

May 2011