

## NFU MUTUAL RISK MANAGEMENT SERVICES LIMITED Standard Terms and Conditions of Purchase (“Terms”)

**The Customer's attention is particularly drawn to the provisions of clause 8.**

### 1. INTERPRETATION

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

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.9.

**Contract:** the contract between NFU Mutual RMS and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from NFU Mutual RMS.

**Deliverables:** the deliverables produced by NFU Mutual RMS for the Customer.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**holding company** and **subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

**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.

**NFU Mutual RMS:** means The National Farmers Union Mutual Insurance Society Risk Management Services Limited registered in England and Wales with company number 3350057 whose registered office is at Tiddington Road, Stratford upon Avon CV37 7BJ.

**NFU Mutual RMS Materials:** has the meaning set out in clause 4.1(g).

**Order:** the Customer's written or verbal acceptance of a quotation by NFU Mutual RMS, as the case may be.

**Services:** the services, including the Deliverables, supplied by NFU Mutual RMS to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services set out overleaf or as agreed between the parties from time to time.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or 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; and
- (e) a reference to writing or written includes faxes and e-mails.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services from NFU Mutual RMS in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when NFU Mutual RMS issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 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 NFU Mutual RMS which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by NFU Mutual RMS are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between NFU Mutual RMS and the Customer for the supply of the Services.

2.4 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.

2.5 Any quotation given by NFU Mutual RMS shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

### 3. SUPPLY OF SERVICES

3.1 NFU Mutual RMS shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 NFU Mutual RMS shall use all reasonable endeavours to meet any performance dates agreed between NFU Mutual RMS and the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 NFU Mutual RMS 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 NFU Mutual RMS shall notify the Customer in any such event.

3.4 NFU Mutual RMS warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 All Deliverables shall be at the sole risk of the Customer from the time of delivery to, or to the order of, the Customer.

#### **4. CUSTOMER'S OBLIGATIONS**

##### **4.1** The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with NFU Mutual RMS in all matters relating to the Services;
- (c) provide NFU Mutual RMS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by NFU Mutual RMS;
- (d) provide NFU Mutual RMS with such information and materials as NFU Mutual RMS may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of NFU Mutual RMS (**NFU Mutual RMS Materials**) at the Customer's premises in safe custody at its own risk, maintain NFU Mutual RMS Materials in good condition until returned to NFU Mutual RMS, and not dispose of or use NFU Mutual RMS Materials other than in accordance with NFU Mutual RMS's written instructions or authorisation.

##### **4.2** If NFU Mutual RMS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) NFU Mutual RMS shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies 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 NFU Mutual RMS's performance of any of its obligations;
- (b) NFU Mutual RMS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NFU Mutual RMS's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse NFU Mutual RMS on written demand for any costs or losses sustained or incurred by NFU Mutual RMS arising directly or indirectly from the Customer Default.

#### **5. CHARGES AND PAYMENT**

5.1 In consideration of provision of the Services by NFU Mutual RMS the Customer shall pay the Charges set out in the Specification or as otherwise agreed between NFU Mutual RMS and the Customer from time to time

5.2 NFU Mutual RMS shall invoice the Customer on completion of the Services or monthly in arrears as agreed between the parties.

5.3 The Customer shall pay each invoice submitted by NFU Mutual RMS:

- (a) within 21 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by NFU Mutual RMS, and time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by NFU Mutual RMS to the Customer, the Customer shall, on receipt of a valid VAT invoice from NFU Mutual RMS, pay to NFU Mutual RMS such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.5 Without limiting any other right or remedy of NFU Mutual RMS, if the Customer fails to make any payment due to NFU Mutual RMS under the Contract by the due date for payment (**Due Date**), NFU Mutual RMS shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the then current Barclays Bank Plc's base lending 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.

5.6 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 NFU Mutual RMS in order to justify withholding payment of any such amount in whole or in part. NFU Mutual RMS may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by NFU Mutual RMS to the Customer.

#### **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables shall be owned by NFU Mutual RMS.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on NFU Mutual RMS obtaining a written licence from the relevant licensor on such terms as will entitle NFU Mutual RMS to license such rights to the Customer.

6.3 All NFU Mutual RMS Materials are the exclusive property of NFU Mutual RMS.

#### **7. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to 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 clause 7 shall survive termination of the Contract.

**8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude NFU Mutual RMS's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- (a) NFU Mutual RMS shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect, special or consequential loss arising under or in connection with the Contract; and
- (b) NFU Mutual RMS's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the amount paid by the Customer under the terms of the Contract.

8.3 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.

8.4 This clause 8 shall survive termination of the Contract.

**9. TERMINATION**

9.1 Without limiting its other rights or remedies, each 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 the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified 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 or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) 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 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, NFU Mutual RMS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice.

9.4 Without limiting its other rights or remedies, NFU Mutual RMS shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and NFU Mutual RMS if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or NFU Mutual RMS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**10. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to NFU Mutual RMS all of NFU Mutual RMS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NFU Mutual RMS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of NFU Mutual RMS Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then NFU Mutual RMS 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, remedies, obligations and liabilities of the parties as at expiry or 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) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. GENERAL

### 11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of NFU Mutual RMS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of NFU Mutual RMS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm.
- (b) NFU Mutual RMS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents NFU Mutual RMS from providing any of the Services for more than 26 weeks, NFU Mutual RMS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 11.2 Assignment and subcontracting:

- (a) NFU Mutual RMS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of NFU Mutual RMS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Data Protection: The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of NFUM RMS and any Group company in connection with the Services.

### 11.4 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract (other than the initial communication of this Contract to you by e-mail) shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

### 11.5 Waiver:

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

### 11.6 Severance:

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

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

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

11.9 Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by both parties.

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