

1. DEFINITIONS & INTERPRETATION

1.1 The definitions in this clause apply in these General Conditions (**General Conditions**) and the CBilling Services Contract:-

Authorised Personnel: has the meaning set out in clause 3.2.

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

CBilling Charges: means our charges from time to time in respect of the provision of the CBilling Services.

CBilling Data: individual items of information or data contained in the CBilling System from time to time.

CBilling Services: the billing and payment collection services we provide using the CBilling System relating to Goods and/or Services supplied by Source Suppliers in accordance with your Orders authorised by us in accordance with clause 2.

CBilling Services Contract: the contract between you and us for the procurement of supplies of Goods and/or Services using the CBilling System incorporating these General Conditions, any relevant Specific Conditions and those additional terms and conditions referred to in clause 2.1.

CBilling System: our interactive procurement and billing system accessible on-line via the CBilling Website including all CBilling Data, database(s) and the technical infrastructure including links, servers, hardware, software, data feeds and all other electronic materials necessary for its operation.

CBilling Website: our website accessible at www.procuria.net.

Deliverables: the deliverables (if any) set out in the Specification for any Services.

Force Majeure Event: has the meaning given to it in Clause 11.1(a).

Goods: the goods (or any part of them) comprised in your Order(s).

Group: in relation to either party each and any subsidiary and holding company of that party and each and any subsidiary of a holding company of that party.

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.

Order: your order for the supply of Goods and/or Services submitted by you directly to the Source Supplier which must be subsequently authorised and invoiced by us via the CBilling System as envisaged in these General Conditions (and **Ordered** and **Ordering** shall have corresponding meanings).

Services: the services (or any part of them), including the Deliverables, comprised in your Order(s).

Source Supplier: the relevant third party supplier of the Goods and/or Services Ordered by you from time to time who is authorised by us to access and use the CBilling System.

Specification: in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that the relevant Source Supplier provides to you, and in relation to Services, the description or specification for Services the relevant Source Supplier provides to you.

Specific Conditions: those additional terms and conditions specified by us (if any) which apply to any particular Goods and/or Services.

we/us/our: refers to us, Central Billing Limited, registered number 07090030, registered office: 6 Earls Court, Priory Park East, Hull HU4 7DY.

you/your: refers to you, the person or firm named in the CBilling Services Contract who Orders Goods and/or Services using the CBilling System.

1.2 In these General Conditions, the following rules apply:

- (a) Headings are used for ease of reference only and do not affect the construction of any of the provisions;
- (b) The singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa;
- (c) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (d) A reference to a party includes its successors or permitted assigns;
- (e) 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;
- (f) 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;
- (g) **Holding company** and **subsidiary** have the meanings 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. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights; and
- (h) A reference to **writing** or **written** includes faxes and e-mails.

2. APPLICATION OF THESE GENERAL CONDITIONS & OTHER TERMS AND CONDITIONS

- 2.1 The CBilling Services Contract will be subject to these General Conditions, any applicable Specific Conditions, your Order and any additional terms and conditions specified by us (as referred to at 2.4 below). You agree to comply with all such terms and conditions when Ordering any Goods or Services to be invoiced and paid for through the CBilling System. The aforementioned terms and conditions shall apply to the CBilling Services Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Please note that we act as agent for the third party Source Suppliers of Goods and Services Ordered by you. We will set up and manage the deal between the Source Supplier and yourselves. This agency model means that ultimately the Source Supplier, not us, will be responsible for fulfilling all aspects of your Order and the Goods/Services Supply Contract except invoicing you for (and receiving payment of) the purchase price in respect of the Goods and/or Services Ordered which we will undertake as the CBilling Services as envisaged in clause 4.2.
- 2.3 From time to time, we may give you notice of additional requirements or conditions relating to particular Goods and/or Services in addition to those set out in these General Conditions and any applicable Specific Conditions. We may also vary these General Conditions from time to time, and will advise you notice of any changes we make when you next access the CBilling System.
- 2.4 You agree that you will comply with any such additional requirements or conditions or changes to these General Conditions which we notify to you from time to time.
- 2.5 In circumstances where any of your Group companies or your Authorised Personnel will access and/or use the CBilling System or receive any Goods or Services, you acknowledge and agree that you accept all the relevant terms and conditions referred to in sub-clause 2.1 on behalf of you, all your Group companies and all your Authorised Personnel, and that you will at all times procure compliance with these Conditions by your Group companies and your Authorised Personnel. You warrant to us that you have full power and authority to enable you to comply with the provisions of this clause 2.4.
- 2.6 You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the CBilling Services Contract. Any samples, drawings, descriptive matter or advertising issued by us or relevant Source Suppliers and any descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the CBilling Services Contract.

3. SUPPLY OF GOODS AND SERVICES & CBILLING SERVICES

- 3.1 You acknowledge and agree that all matters relating to the supply of the Goods and Services to you, (save and except billing and payment for such Goods and Services which we undertake under the CBilling Services), including:
- (a) Production supply and delivery of Goods and Services (including procedures and remedies for late or non-delivery);
 - (b) Claims relating to any alleged defects in any Goods or Services; and warranties relating to Goods and Services supplied;
 - (c) Passing of title to and risk in Goods supplied (and any Deliverables relating to Services);

will be undertaken by you under a separate Goods/Services Supply Contract made between you and the Source Supplier concerned (as referred to in clause 2.4).

- 3.2 In providing the CBilling Services we act as agent for the Source Supplier in issuing invoices to you (and receiving payment from you) in respect of the purchase price and any other amounts due in respect of Goods and/or Services Ordered by you under the Goods/Services Supply Contract. You acknowledge and agree that we are entitled to enforce payment of amounts due by you under the terms of each Goods/Services Supply Contract as if we were party to it.
- 3.3 You indemnify us and hold us harmless from and against all claims and all liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) incurred by us as a result of or in connection with any breach or negligent performance or failure or delay in performance by you of the Goods/Services Supply Contract or the CBilling Services Contract. The provisions of this clause 4.2 shall survive termination of the CBilling Services Contract, however arising.
- 3.4 There will be no annual charges or percentage saving charge levied for use of the CBilling services.

4. YOUR OBLIGATIONS

- 4.1 In addition to those obligations referred to in these General Conditions, you must:
- (a) ensure that the terms of your Order and the information you provide via the CBilling System are complete and accurate;
 - (b) co-operate with us in all matters relating to the CBilling Services Contract, and provide us with such information as we may reasonably require, and ensure that such information is complete and accurate;

5. CHARGES AND PAYMENT

- 5.1 On your behalf, we shall pay the relevant Source Supplier for Goods and Services which you from time to time may Order from Source Suppliers
- 5.2 The price payable by you for all Goods and Services Ordered shall be the price set out in the Order which is authorised and invoiced by us via the CBilling System (or as subsequently amended via the CBilling System) as envisaged in clause 2.2 and, unless otherwise so stated,

shall be exclusive of any applicable value added tax which shall be payable by you in addition to the price. The contract governing the supply of the Goods and/or Services between you and the Source Supplier concerned will determine whether such price includes costs and charges associated with packaging, insurance, transport of relevant Goods.

- 5.3 You must pay each invoice submitted by us from time to time:
- (a) within 10 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account we nominate in writing;

by Direct Debit from your nominated bank account (unless we agree a different payment method with you) subject to us extending credit facilities to you (as to which see clause 6.6 below). Time for payment shall be of the essence of the CBilling Services Contract. We reserve the right to levy an administration charge at our current rates from time to time in the event that any Direct Debit payment from you is not paid. All amounts payable by you pursuant to clauses 6.2 and 6.3 are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) and you must, on receipt of a valid VAT invoice from us, pay us such additional amounts in respect of VAT as is chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

- 5.4 Without limiting any of our other rights or remedies, if you fail to make any payment due to us under the CBilling Services Contract by the due date for payment (**Due Date**), we shall have the right to charge interest on the overdue amount at the rate of 4% 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.
- 5.5 You must pay all amounts due under the CBilling Services Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us or any Source Supplier in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to it by you against any amount payable by us to you.
- 5.6 In circumstances where any sums payable by you under the CBilling Services Contract at any time exceed your credit limit set by us (**Credit Limit**), or we advise you that no Credit Limit is available to you, we shall be entitled to issue you with an interim invoice or request an immediate payment on account from you in respect of any such amounts payable by you and you shall comply with any such request. Any extension of credit allowed to you may be changed or withdrawn at any time, and if in our reasonable opinion your credit-worthiness has deteriorated, then we shall, (without prejudice to any of other rights), have the right to reduce or remove your Credit Limit.
- 5.7 Any non payment of monies owed for services will be collected via debt collection agency and any charges incurred by both Procuria or Debt collection agency will/may be added as recovery costs. This may result in criminal charges.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the CBilling System (or any part thereof, including the technical infrastructure which supports the CBilling System and all software and electronic materials employed in its operation) are owned by us, and shall remain our exclusive property. All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by us (or the appropriate Source Supplier). No Intellectual Property Rights in any of the foregoing are transferred or licensed to you, except as expressly provided in these General Conditions.
- 6.2 You agree and consent to us storing any relevant information or data which you provide to us on the CBilling System database, and acknowledge that (save and except confidential information relating to Services and Goods ordered) such information may be accessed and re-used by other users of the CBilling System.
- 6.3 You acknowledge that, in respect of any third party Intellectual Property Rights in the Services, your use of any such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

7. CONFIDENTIALITY

Each 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 reasonably need to know it for the purpose of discharging the Receiving Party's obligations under the CBilling Services 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 8 shall survive termination of the CBilling Services Contract.

8. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Nothing in these General Conditions shall limit or exclude our liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation.

- 8.2 All Goods and/or Services Ordered shall be delivered in accordance with the Goods/Services Supply Contract entered into between you and the Source Supplier concerned referred to in clause 2.4. You acknowledge that all Goods and Services will be delivered directly by

Source Suppliers and not by us. We therefore make no guarantee and/or undertaking in respect of delivery of the Goods or Services but will in appropriate cases use our reasonable endeavours to expedite delivery. We accept no liability for any loss resulting from late or non-delivery of the Goods or Services and time of delivery shall not be of the essence.

8.3 You also acknowledge that Goods and Services Ordered via the CBilling System are never under our control or possession. We shall accept no liability for any loss you sustain relating to any defect in the Goods and Services, the packaging of the Goods and/or any failure in the Goods or Services to conform with any applicable sample or Specification.

8.4 Nothing herein shall impose any liability upon us in respect of any defect in the Goods and Services arising out of any acts, omissions, negligence or default by you, your employees or agents including in particular (but without prejudice to the generality of the foregoing) any failure by you to comply with any recommendations of the Source Supplier as to storage and handling of the Goods.

8.5 Subject to Clause 9.1:

- (a) We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising under or in connection with the CBilling Services Contract; and
- (b) our total liability to you arising under or in connection with the CBilling Services Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, shall not exceed £50,000.

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

8.7 This Clause 9 shall survive termination of the CBilling Services Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the CBilling Services Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the CBilling Services Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the 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 the 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 10.1(b) to Clause 10.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole 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 our other rights or remedies, we may terminate the CBilling Services Contract at any time:

- (a) by giving you not less than 28 days written notice;
- (b) with immediate effect by giving written notice to you if you fail to pay any amount due under the CBilling Services Contract on the due date for payment.

9.3 You may terminate the CBilling Services Contract by giving us not less than 28 days written notice.

9.4 Without limiting our other rights or remedies, we may at our discretion withdraw our authorisation of your Order (or withdraw our authorisation of part only of the Goods and/or the Services comprised in an Order) and terminate provision of CBilling Services relating to that Order by giving notice to you at any time prior to delivery or performance by the Source Supplier. Circumstances in which we may elect to do so include (without limitation):

- (a) if the relevant Goods/Services Supply Contract is terminated or suspended (or if your Order is cancelled or suspended) for any reason;
- (b) if any event occurs, or proceeding is taken, with respect to the Source Supplier concerned of the kind mentioned in clause 10. or
- (c) in the event that your credit rating is reduced to a material extent below the level which was prevailing at the time the Order was authorised in accordance with clause 2.

10. CONSEQUENCES OF TERMINATION

On termination of the CBilling Services Contract for any reason:

- (a) you must immediately pay all our outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, we will submit an invoice which shall be payable by you immediately on receipt;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the CBilling Services Contract which existed at or before the date of termination or expiry; and
- (c) Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- (d) Any outstanding debt will be given to appropriate agencies for recovery. See Section for CBilling Services charges.

11. GENERAL

11.1 Force majeure:

- (a) For the purposes of the CBilling Services Contract, **Force Majeure Event** means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party concerned, a Source Supplier 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 or default of suppliers or subcontractors.
- (b) We shall not be liable to you as a result of any delay or failure to perform our obligations under the CBilling Services Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event continues for a continuous period of more than 4 weeks, we shall, without limiting our other rights or remedies, have the right to terminate the CBilling Services Contract immediately by giving written notice to you.

11.2 Assignment and subcontracting:

- (a) We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the CBilling Services Contract and may subcontract or delegate in any manner any or all of our obligations under the CBilling Services Contract to any third party.
- (b) You must not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the CBilling Services Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the CBilling Services Contract 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 or sent by e-mail to the other party's email address specified for use in conjunction with the CBilling System.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address, if sent by prepaid 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 or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day.
- (c) This Clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action.

11.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the CBilling Services 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 CBilling Services 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 CBilling Services Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the CBilling Services 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 CBilling Services Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the CBilling Services 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.

11.6 **No partnership:** Nothing in the CBilling Services 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.

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

11.8 **Variation:** Save and except as expressly provided in clause 2.3, any variation, including the introduction of any additional terms and conditions, to the CBilling Services Contract shall only be binding when agreed in writing and signed by us.

11.9 **Governing law and jurisdiction:** The CBilling Services 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.

Customer Acceptance

We acknowledge the General Conditions above, and agree they will apply to our access to and use of all Goods and/or Services we order which are invoiced via the CBilling System.