

## EXERTIS STANDARD TERMS OF PURCHASE

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words shall have the following meanings unless stated otherwise:

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| <b>Business Day</b>                      | a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;  |
| <b>Confidential Information</b>          | any information relating to a party's business (or the business of that party's Group), that would be regarded as confidential by a reasonable business person and which is not in the public domain unless through a breach of these Terms;  |
| <b>Contract</b>                          | each agreement for the supply of Products and/or Support Services which shall comprise of the Order, these Terms and the Exertis Supplier Code of Practice;   |
| <b>Dead on Arrival or DOA</b>            | all or part of a Product that fails to operate (fully or in part) within the earlier of 30 days of purchase by Exertis's ultimate customer (the end user) or 90 days from the date of invoice for the Products;   |
| <b>Delivery</b>                          | completion of delivery of an Order in accordance with clause 4;   |
| <b>Delivery Date</b>                     | the date specified in an Order (or otherwise agreed in writing between the parties) for delivery of the Products or performance of Support Services which are the subject of that Order;  |
| <b>Delivery Location</b>                 | the location specified in an Order (or otherwise agreed in writing between the parties) for delivery of the Products or performance of the Support Services which are the subject of that Order;  |
| <b>Epidemic Failure</b>                  | shall occur if (a) in any successive period of 3 months a Product's return rate is 8% or more of the total sales of that Product in that 3 month period regardless of whether the Product is subsequently found to be faulty; and/or (b) where the excess of common customer complaints in relation to such Product significantly affects future sales of such Product; |
| <b>Exertis Supplier Code of Practice</b> | Exertis's ethical code of practice as updated from time to time and which is available on Exertis's website ( <a href="http://www.exertis.com/downloads/exertis_supplier_code_practice.pdf">http://www.exertis.com/downloads/exertis_supplier_code_practice.pdf</a> );  |
| <b>Group</b>                             | in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries each as defined in section 1162 of the Companies Act 2006;   |
| <b>No Quibble Return</b>                 | the return of a Product for a full refund of the price paid for the Product by Exertis and such returned Product shall be accepted by the Supplier without any questions or   |

objections or need for further communication between the parties, regardless of the condition of the Product so returned;

**Not Fit For Purpose**

a Product that is not of satisfactory quality, and/or does not fit its description and/or does not do what it is designed and marketed to do;

**Order**

an order placed by Exertis in accordance with clause 2 and which shall include any order issued or agreed in writing by Exertis which shall detail an Exertis issued and approved purchase order reference number, the Products (including their quantity) and/or Support Services ordered by Exertis and their price;

**Prices**

the price of the Products and/or Support Services as set out in the Order;

**Products**

as described in the Order;

**Representatives**

employees, agents, officers, advisers, permitted sub-contractors and/or other representatives of a party;

**Supplier**

the entity or person named in the Order;

**Support Services**

the after sales support, technical support and/or other support to be provided by the Supplier to Exertis and as detailed in the Order;

**Terms**

these terms and conditions as may be amended by Exertis from time to time.

- 1.2 References to clauses are to clauses of these Terms. Headings shall not affect the interpretation of the Terms.
- 1.3 References in these Terms to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any sub-ordinate legislation made under it.
- 1.4 Words denoting the singular include the plural and vice versa; words denoting any one gender include all genders and vice versa and reference to a person shall include an individual, partnership, body corporate and unincorporated association.
- 1.5 A reference to writing or written includes e-mail to the extent that the sender of the email has received an acknowledgement email from the recipient.
- 1.6 Any phrase introduced by these Terms "including", "include", "in particular" or any similar expression shall be for illustrative purposes only and shall not limit the sense of the words preceding those terms.

**2. BASIS OF PURCHASE**

- 2.1 The Supplier shall act in accordance with the Exertis Supplier Code of Practice.
- 2.2 An Order placed by Exertis constitutes an offer by Exertis to purchase the Products and/or Support Services specified in the Order from the Supplier. An Order shall not be binding on Exertis until accepted by the Supplier in accordance with these Terms and shall then be subject to Exertis's right of cancellation set out in these Terms. Nothing obliges Exertis to place an Order or further Orders.

- 2.3 Each Order shall, at Exertis's discretion:
- 2.3.1 be in writing and specify a unique purchase order reference number (to be determined by Exertis);
  - 2.3.2 specify the type and quantity of Products and/or Support Services ordered, and, where applicable, the Product or Support Services code numbers; and
  - 2.3.3 specify the Delivery Date and the Delivery Location unless these are to be specified after the placing of an Order, in which case Exertis shall give the Supplier reasonable advance notice of the relevant information.
- 2.4 The Supplier shall acknowledge receipt of each Order no later than within one (1) Business Day of the Order being placed by Exertis. Each party shall use the relevant Order number in all subsequent correspondence relating to the Order.
- 2.5 Acceptance of the Order by the Supplier shall take place on the earlier of it being expressly accepted or confirmed by the Supplier in writing or by any other conduct which is consistent with acceptance. Upon acceptance of the Order a binding contract shall exist for the supply of the Products and/or Support Services by the Supplier to Exertis on the terms of the Contract.
- 2.6 Exertis has the right to amend quantities and scheduled Delivery Date and/or Delivery Location for Orders by issuing an amendment in writing to the Supplier and the Supplier shall comply with and implement such amendments. Any other amendments to an Order must be made by agreement in writing between Exertis and the Supplier.
- 2.7 Exertis may, at any time prior to despatch of the Products or performance of the Support Services, cancel an Order by written notice to the Supplier. If Exertis amends or cancels an Order, Exertis shall have no liability to the Supplier in respect of such amendment or cancellation.
- 2.8 The Supplier shall sell, and Exertis shall purchase, the Products and Support Services in accordance with the Contract and the terms of the Contract shall apply to the exclusion of any other terms of the Supplier.
- 2.9 Subject to clause 2.6 no variation of the Contract shall be effective unless made in writing and signed by duly authorised representatives of both parties.
- 2.10 In the event of any conflict between the Order, these Terms, and the Exertis Supplier Code of Practice, the order of priority shall be the Order, then these Terms then the Exertis Supplier Code of Practice.

### 3. QUALITY

- 3.1 In addition to the terms and duties implied by law and any warranties set out in the Contract, the Supplier warrants as follows:
- 3.1.1 that the Products (and any packaging and related materials such as manuals) supplied to Exertis shall:
    - (a) conform in all respects with any specifications, drawings, brochures or marketing information and descriptions relevant to the Product and will not deviate in substance or form from any samples provided to Exertis;
    - (b) be of the standards specified from time to time by Exertis which may vary depending on Exertis business requirements and the type of Products being provided;
    - (c) be new, complete (for example have all manuals and instructions) and not repaired, refurbished or counterfeit;

- (d) be fit for the purposes for which they are intended and for any purposes that Exertis has expressly or by implication made known to the Supplier;
- (e) be (and remain) free from defects in design, materials and workmanship;
- (f) be marked in accordance with Exertis instructions and any applicable requirements of any carrier and properly packed and secured so as to reach their destination in an undamaged condition;
- (g) be of the quality, quantity and description described in the Contract and in any event at least be of satisfactory quality as referred to in the Sale of Goods Act 1979;
- (h) not and will not at any future time, in any way, infringe the intellectual property rights or any other rights of any third parties;
- (i) be sold by the Supplier with full title guarantee;

3.1.2 conform with all applicable statutory and regulatory requirements and any other international standards;.

3.1.3 in the manufacturing, packing, packaging marking, storing, handling, delivery and supply of the Products and the provision of the Support Services, it shall:

- (a) comply with all applicable laws, enactments, orders, regulations and other instruments and generally accepted industry standards and practices;
- (b) adhere to any specific requirements set out in the Order;
- (c) comply with any instructions provided by Exertis;
- (d) obtain and maintain in force at all relevant times all licences, permissions, authorisations, consents and permits needed for such activities and shall supply copies of any such documentation to Exertis without delay on request;
- (e) use appropriately qualified, experienced and trained personnel, and perform the Support Services with due care and diligence and to such high standard of quality as it is reasonable for Exertis to expect in all the circumstances from an experienced and professional service provider and in accordance with all relevant statutory requirements and regulations.

3.2 The Supplier shall assign to Exertis on request the benefit of any warranty, guarantee or similar rights which it has against any third party manufacturer or supplier of the Products (or any parts of the Products) and, if requested, promptly provide Exertis with the corresponding certificates and any other documentation Exertis reasonably requires.

## 4. DELIVERY

The Supplier shall unless otherwise required in writing by Exertis, deliver the Products to, and perform the Support Services, at the Delivery Location on the Delivery Date and within any time slot specified by Exertis.

The Supplier shall not deliver Products outside of the specified time slot or on a day other than the Delivery Date without the prior written consent of Exertis.

The Supplier shall comply with any delivery instructions that may be issued by Exertis and ensure each delivery of Products shall be accompanied by a delivery note from the Supplier showing the Order reference number, a valid booking reference number (provided by Exertis), the date of the Order, the type and quantity of Products included in the Order, including the reference number of

the Products, and, in the case of Products being delivered by instalments, the outstanding balance of Products remaining to be delivered.

- 4.1 Unless otherwise agreed, delivery of the Products shall be Delivery Duty Paid in accordance with the provisions of the INCOTERMS 2010 published by the International Chamber of Commerce (as amended from time to time)
- 4.2 The Supplier shall not deliver Products by instalments except with the prior written consent of Exertis. Where Products are to be delivered by instalments, the Contract shall be treated as a single contract and shall not be severable by the Supplier however Exertis may, at its option, permit the Supplier to invoice for such instalments separately. References in the Contract to Orders shall, where applicable, be read as references to instalments.
- 4.3 Time of delivery of the Products and performance of the Support Services is of the essence and if there is any delay, Exertis may, without penalty, cancel the Contract or any part of it.
- 4.4 Exertis may reject any over or under deliveries and shall not be required to pay for any Products delivered in error.
- 4.5 If Products are not delivered, or the Support Services are not performed on the specified Delivery Date and/or within the specified time slot for delivery or performance, then, without limiting its other rights or remedies Exertis may:
- 4.5.1 refuse to take any attempted delivery of the Products;
  - 4.5.2 terminate the applicable Order and/or the Contract with immediate effect; and/or
  - 4.5.3 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Products or perform the Support Services on the Delivery Date;

provided that the Supplier shall have no liability for any failure or delay in delivering Products to the extent that such failure or delay is caused by Exertis's failure to comply with its obligations under the Contract.

- 4.6 If the Supplier requires Exertis to return any pallets, packaging or packing materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the Products, and any such returns shall be at the Supplier's expense.

## 5. ACCEPTANCE AND DEFECTIVE PRODUCTS AND SUPPORT SERVICES

- 5.1 Exertis shall be entitled to reject all or any part of the Products delivered or Support Services performed which are not in accordance with the Contract. Any acceptance of defective, late or incomplete Products or Support Services or any payment made shall not constitute a waiver of any right or claim Exertis may have, including its right to reject. Exertis shall not be deemed to have accepted any Products or Support Services until it has expressly communicated such acceptance to the Supplier in writing.
- 5.2 **Not Fit For Purpose** - If any Products delivered to Exertis are Not Fit For Purpose or if they do not comply with clause 3.1, or otherwise do not conform with the Contract then, Exertis may return any such Products on a No Quibble Return basis to the Supplier (at the Supplier's cost) and the Supplier shall promptly issue (at Exertis's option) either a cash refund or a credit note for the full price paid for such Products by Exertis.
- 5.3 **DOA** - If a Product is deemed by Exertis to be DOA it shall be returned to the Supplier on a No Quibble Return basis and the Supplier shall promptly issue (at Exertis's option) either a cash refund or a credit note for the price paid for such Product by Exertis.
- 5.4 **Epidemic Failure** - Notwithstanding clauses 8.1 to 8.3, in the event of an Epidemic Failure, Exertis may at its discretion and at the Supplier's sole cost:
- 5.4.1 suspend any further Orders and/or Deliveries of the Products which are the subject of an Epidemic Failure;

- 5.4.2 require the Supplier to promptly collect all Products which are the subject of an Epidemic Failure and are currently held in stock by Exertis and/or have been sold to Exertis's customers;
- 5.4.3 require the Supplier to immediately issue (at Exertis's option) either a cash refund or a credit note for the full price paid for such Product by Exertis for the Products which are the subject of an Epidemic Failure and collect such Products from Exertis; and/or
- 5.4.4 notwithstanding clause 3 (Quality), require the Supplier to reimburse Exertis on demand for any penalties, costs or damages which Exertis is required to pay to its customers, end users of the Products or any other third party following or in relation to an Epidemic Failure which the Supplier shall pay.

5.5 If the Support Services are not supplied in accordance with the Contract, Exertis shall be entitled (to exercise any one or more of the following rights or remedies:

- 5.5.1 to rescind the Contract;
- 5.5.2 to refuse to accept the provision of any further Support Services by the Supplier and to require Supplier to immediately issue (at Exertis's option) either a cash refund or a credit note for the full price paid by Exertis for the Support Services;
- 5.5.3 to require the Supplier, without charge to Exertis, to re-perform the Support Services and/or carry out such additional work as is necessary to correct the Supplier's failure; and/or
- 5.5.4 in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of the Contract not otherwise covered by the provisions of this clause 5.5.

5.6 The Supplier shall issue any cash refund or credit note it is required to provide to Exertis under the Contract within 30 days of the end of the month in which the relevant Products were returned or the Support Services were rejected.

5.7 Where Products are Not Fit For Purpose, DOA or there is an Epidemic Failure, Exertis may impose a reasonable charge for handling, storing and returning the affected Products.

## 6. SUPPORT SERVICES

6.1 The Supplier shall promptly provide to Exertis any Support Services detailed in the Order or agreed in writing.

6.2 In providing the Support Services, the Supplier shall comply with the Contract and any special terms and conditions in respect of the Support Services which are set out in the Order or agreed in writing between the parties.

6.3 The Supplier shall allow end users and resellers of the Products to return Products directly to the Supplier where such Products do not comply with any warranty or guarantee offered to such end user or reseller. The Supplier shall keep and maintain accurate records of all returns, refunds and assistance provided and, if requested, provide Exertis with a reference number which shall apply to the relevant return and/or refund of such Products.

## 7. TITLE AND RISK

7.1 The risk in Products shall pass to Exertis on the later of Delivery or acceptance of the Products by Exertis in accordance with the Contract.

7.2 Title to the Products shall pass to Exertis upon payment being made by Exertis for or in relation to the Products.

7.3 Notwithstanding clause 7.2, Exertis may resell or use Products in the ordinary course of its business.

## 8. PRODUCT RECALL

8.1 The Supplier shall maintain appropriate and up-to-date records to enable the immediate recall of any Products from the market. These records should include but not be limited to batch and order numbers. Such records should be retained by the Supplier for a period equivalent to the commercial lifecycle of the Products.

8.2 The Supplier shall immediately notify Exertis in writing together with all relevant details if the Supplier has any reason to suspect or believe that there is:

8.2.1 any defect in any Products previously delivered to Exertis at any time; or

8.2.2 if applicable, any error or omission in the instructions for the use and/or assembly of the Products which exposes or may expose consumers to any risk of death, injury or damage to property; and

8.2.3 in such cases, Exertis may suspend any further delivery of any Products.

8.3 Exertis may at its discretion and at the Supplier's sole cost:

8.3.1 recall any Products sold by Exertis to its customers (whether for a refund or credit or for repair or modification of the Products which shall in each case be at Exertis's instruction and at the Supplier's cost); and/or

8.3.2 issue any written or other notification to its customers about the manner of or operation of any Products already sold by Exertis to its customers;

in each case on the basis of the identification whether by Exertis, its customers or any third party of any defect in the relevant Products or any error or omission in the instructions for their use or assembly which Exertis reasonably concludes affects or probably affects any of the Products supplied or exposes or may expose any of its customers to any risk of death, injury or damage to property.

8.4 The Supplier shall indemnify and keep indemnified Exertis against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Exertis arising out of or in connection with administering any product recall campaign.

## 9. PRICES

9.1 Subject to the following the Prices shall be as set out in the Order and shall be full and exclusive remuneration of the Supplier in respect of the Products and/or Support Services.

9.2 Unless otherwise indicated in the Order, the Prices are inclusive of the costs of packaging, insurance and carriage of the Products to the Delivery Location.

9.3 No increase in the Prices may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of Exertis in writing.

9.4 The Supplier agrees to notify Exertis in writing of any decrease in the Prices and will pass on the benefit of any price decrease to Exertis where such price decrease occurs between the date of the Order and the Delivery Date.

9.5 The Prices are exclusive of amounts in respect of VAT or any equivalent sales tax (which shall be payable by Exertis on receipt of a valid VAT invoice from the Supplier).

## 10. TERMS OF PAYMENT

- 10.1 The Supplier shall be entitled to invoice Exertis for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order reference number(s).
- 10.2 Unless the Order expressly states otherwise Exertis shall pay invoices within 60 days from the end of the month in which an invoice is validly issued. Payment shall be made by bank transfer into the bank account set out in the contact details of the Order (or as otherwise notified to Exertis in writing).
- 10.3 Payment (and invoicing) shall be in the currency as set out in the Order or if not specified, in pounds sterling.
- 10.4 If either party fails to make any payment due to the other under the Contract by the due date for payment then interest shall be charged on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that are disputed in good faith.
- 10.5 If Exertis disputes any invoice it shall notify the Supplier and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all evidence as reasonably necessary to verify the disputed invoice or request for payment.
- 10.6 If the parties have not resolved the dispute (referred to in clause 10.5) within 30 days of the giving of notice, the dispute shall be resolved in accordance with the dispute resolution procedure as set out in these Terms. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date. The Supplier's obligations to supply the Products and/or Support Services shall not be affected by any payment dispute.
- 10.7 Exertis may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Supplier (or any member of the Supplier's Group) against any amounts payable by Exertis to the Supplier.

## 11. END OF LIFE/DISCONTINUATION

The Supplier shall provide Exertis with at least 30 days' written notice where a Product is to be discontinued. Any stock of such discontinued Products held by Exertis at the end of such notice period shall be returned to the Supplier (less any Products which are the subject of a customer's order which Exertis may fulfil) and (at Exertis's option) a cash refund or a credit note for the full purchase price of such Products (less any delivery and insurance costs and VAT originally invoiced by the Supplier in respect of that Product) shall be issued by the Supplier to Exertis.

## 12. TRADEMARKS

- 12.1 The Supplier grants to Exertis a royalty-free right to use its trademarks in the promotion, advertisement and sale of the Products and/or Support Services.
- 12.2 Exertis shall use reasonable endeavours to comply with the rules for the use of the trademarks which the Supplier may provide for this purpose.

The Supplier warrants that Exertis's use of its trademarks shall not infringe the intellectual property rights or any other rights of any third party. 12.4 The Supplier shall promptly notify Exertis in writing if it becomes aware of any infringement or suspected infringement of the trademarks or any other intellectual property rights relating to the Products; or any claim that any Product or the manufacture, use, sale or other disposal of any Product, whether or not under the trademarks, infringes the rights of any third party.

## 13. CONFIDENTIALITY



- 13.1 Each party undertakes that it shall not at any time use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 13.2 Neither party shall disclose to any person any Confidential Information of the other party except to members of its Group, as may be required by law, pursuant to the order of any court or governmental agency or to comply with the rules of any stock exchange on which its shares or securities are listed or traded, or to its advisors, employees and contractors who need to know such information for the purposes of carrying out that party's obligations under the Contract. The disclosing party must take all reasonable steps to ensure that any person to whom it discloses Confidential Information complies with the confidentiality obligations contained in this clause 13.

## 14. TERMINATION

- 14.1 Either party may terminate the Contract by giving 90 days' written notice to the other (unless otherwise stated in the Order).
- 14.2 Either party may terminate the Contract immediately by giving written notice to the other if:
- 14.2.1 the other party commits a material breach of the Contract and, if such a breach is remediable, fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - 14.2.2 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due or admits inability to pay its debts or suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 14.2.3 any encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business.
- 14.3 Exertis may terminate the Contract with immediate effect if the Supplier is subject to a change of control in its ownership or management that Exertis considers is detrimental to the Contract or the relationship between Exertis and the Supplier.
- 14.4 On any termination or expiry of the Contract, the accrued rights and liabilities of the parties as at termination, and all clauses which are expressly or by implication to survive termination or expiry, shall survive and continue such clauses shall include but not be limited to clause 5 (*Acceptance and Defective Products and Support Services*); clause 8 (*Product Recall*); clause 13 (*Confidentiality*); clause 16 (*Indemnity*); clause 17 (*Limitation of Liability*); clause 21 (*Dispute Resolution*); clause 22 (*Notices*); clause 24 (*Governing Law*).
- 14.5 For the purposes of this clause 14 any notices to be provided in writing shall not be served or sent via email.

## 15. OBLIGATIONS ON TERMINATION

- 15.1 Each party shall promptly:
- 15.1.1 return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the Contract;
  - 15.1.2 return to the other party all documents and materials (and any copies) containing the other party's Confidential Information and erase all of the other party's Confidential Information from its computer systems (to the extent possible); and
  - 15.1.3 on request, certify in writing to the other party that it has complied with the requirements of this clause 15.

- 15.2 On termination or expiry of the Contract, Exertis shall have the option to either (i) retain any stocks of the Products to sell on; or (ii) return any stocks of the Products to the Supplier. If Exertis opts to return stocks of Products to the Supplier, the Supplier shall (at Exertis's option) issue a cash refund or credit note for the full price paid for such Products by Exertis. The Supplier shall issue such cash refund or credit note within 30 days of the end of the month in which the relevant Products were returned.
- 15.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 16. INDEMNITY**
- 16.1 The Supplier shall indemnify and keep indemnified Exertis against all demands, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Exertis arising out of or in connection with:
- 16.1.1 any failure of the Products or Support Services to comply with clause 3 (Quality);
  - 16.1.2 any claim made against Exertis for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply, use or marketing of the Products or Support Services or the trademarks;
  - 16.1.3 any claim made against Exertis by a third party arising out of, or in connection with, the supply of the Products or Support Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - 16.1.4 any claim made against Exertis by a third party for death, personal injury or damage to property arising out of, or in connection with, any defect or failure in the Products or Support Services, to the extent that the defect or failure is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 17. LIMITATION OF LIABILITY**
- 17.1 Nothing in the Contract shall limit or exclude the liability of either party for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation or any other matters that cannot be excluded or limited by law.
- 17.2 Subject to clause 17.1, Exertis shall have no liability however arising out of or in connection with the Contract, the Support Services or the Products for any:
- 17.2.1 loss of profit;
  - 17.2.2 loss of goodwill;
  - 17.2.3 loss of business and/or business opportunity;
  - 17.2.4 loss of anticipated saving;
  - 17.2.5 loss or corruption of data or information; and/or
  - 17.2.6 special, indirect or consequential damage or loss.
- 17.3 The parties agree that each of the sub-clauses in clause 17.2 constitute separate terms and the introductory wording of clause 17.2 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 17.2 or otherwise.

- 17.4 The term “however arising” when used or referred to in clauses 17.2 and 17.5 covers all causes and actions giving rise to the liability of Exertis arising out of or in connection with the Contract, the Support Services or the Products including (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; or (iii) whether caused by any total or partial failure or delay in supply of the Support Services or Products or defective Products.
- 17.5 Subject to clause 17.1 Exertis's total aggregate liability arising under or in connection with the Contract, however arising, shall be limited to an amount equal to the price paid by Exertis for the Products or Support Services in respect of which liability has arisen unless otherwise stated in the Order.

## 18. INSURANCE

- 18.1 For the duration of the Contract and for a period of six (6) years afterwards the Supplier shall maintain in force sufficient insurance with reputable insurance companies to cover its potential liabilities in connection with the Contract. The Supplier shall provide to Exertis (at Exertis's request) details of its insurance coverage and evidence that the premiums have been paid in full when due.
- 18.2 The Supplier shall:
- 18.2.1 do nothing to invalidate any insurance policy or to prejudice Exertis's entitlement under it; and
  - 18.2.2 notify Exertis if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 18.3 The Supplier's liabilities under any term of the Contract or otherwise shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 0.

## 19. FORCE MAJEURE

- 19.1 If the Supplier is unable to perform its duties and obligations under the Contract as a direct result of the effect of any fire, flood, earthquake or other act of God, act of government or state, war, civil commotion, insurrection or embargo, being events which are beyond its control (an “Event of Force Majeure”), it shall give written notice to Exertis of the inability, stating the reason in question. Forthwith upon the reason ceasing to exist, the Supplier shall give written advice to Exertis of this fact. If a delay or default due to an Event of Force Majeure continues for more than a period of 28 days Exertis shall be entitled to terminate the Contract with immediate effect by giving notice in writing.

## 20. ANTI-BRIBERY

- 20.1 The Supplier shall:
- 20.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and US Foreign Corrupt Practices Act 1977;
  - 20.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 20.1.3 promptly report to Exertis any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the contract; and
  - 20.1.4 immediately notify Exertis if a foreign public official becomes its officer or employee or acquires a direct or indirect interest in it.

- 20.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in relation to anti-bribery and corruption provisions and requirements as set out in this clause 20 or otherwise set out in the Exertis Supplier Code of Practice.
- 20.3 For the purpose of this clause 20, the meaning of foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 21. DISPUTE RESOLUTION PROCEDURE

- 21.1 If any dispute arises in connection with the Contract, the relevant account managers for each of Exertis and the Supplier shall, within 20 Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute remains unresolved, it will be escalated to the each party's Managing Director.
- 21.2 If, following escalation to each party's Managing Director, the matter in dispute has not been resolved within 20 Business Days or it has been concluded by Exertis (acting reasonably) that resolution is unlikely, the parties shall, have the option of commencing litigation in the courts. Each party shall bear its own costs and expenses incurred in these proceedings unless a different agreement is reached as part of any settlement.
- 21.3 If the unresolved matter is having a serious effect on the parties' performance of their respective obligations under the Contract, the parties shall use reasonable endeavours to reduce the time spent in completing the resolution process. Subject to clause 21.4, neither party may initiate legal action until the process referred to in clauses 21.1 to 21.2 has been completed, unless it has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.
- 21.4 This clause shall not prevent either party from applying at any time to the court for interim or injunctive relief.

## 22. NOTICES

- 22.1 A notice or other communication required to be given under the Contract shall be in writing and shall be delivered by hand, or sent by pre-paid first class post or recorded delivery or by commercial courier, or sent by email to the party required to receive the notice or communication at its address set out in the Order, marked for the attention of the person set out in the Order.
- 22.2 A notice or other communication shall be deemed duly received:
- 22.2.1 if delivered by hand, when left at the address and for the contact referred to in this clause; or
  - 22.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
  - 22.2.3 if delivered by commercial courier, on the date and at the time the courier's delivery receipt is signed; or
  - 22.2.4 in the case of e-mail at the time the e-mail is received by the intended recipient provided that it has been sent with a delivery receipt which is subsequently confirmed and that no error message indicating failure to deliver has been received by the sender.
- 22.3 If a notice or other communication is required to be delivered to an address outside the country from which it is sent, it shall be in writing and shall be delivered by commercial courier (and shall require a signature on delivery) to the party required to receive the notice or communication at its address set out in the Order, marked for the attention of the person set out in the Order. Such notice shall be deemed duly received on the date and at the time the courier's delivery receipt is signed.

22.4 All notices delivered by hand, post or commercial courier in accordance with this clause shall be accompanied by an email sent to the contact set out in the Order attaching an electronic copy of the documentation being delivered by post or commercial courier.

## **23. GENERAL**

23.1 The Supplier shall not assign, novate, transfer or subcontract any of its rights, benefits or obligations under the Contract without the prior written consent of Exertis.

23.2 Exertis may at any time assign, novate, transfer or subcontract any of its rights, benefits of obligations under the Contract.

23.3 Failure to exercise, or any delay in exercising, any right or remedy under the Contract, or at law or equity, shall not be a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

23.4 Save where expressly provided otherwise, the rights and remedies provided in the Contract are cumulative and are not exclusive of any right or remedy provided by law.

23.5 If any provision of the Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal and enforceable.

23.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, make any party the agent of another party, nor authorise any party to enter into commitments for or on behalf of the other party.

23.7 Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, and/or procure the execution and delivery of all documents and doing of all such things as required to give effect to the Contract and the transactions contemplated by it.

23.8 The Contract and any documents referred to in it is the entire agreement between the parties and supersedes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.

23.9 Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract.

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

## **24. GOVERNING LAW AND JURISDICTION**

24.1 The Contract and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any such dispute or claim. Nothing in this clause shall prevent Exertis from bringing enforcement action against the Supplier in any jurisdiction relevant to the Supplier and its business.