

XPS PENSIONS CONSULTING LIMITED STANDARD TERMS AND CONDITIONS OF PURCHASE (“these Terms”)

1. Interpretation and Definitions

In these Terms:

“Authorised Person” shall mean any XPS colleague who is authorised to make financial commitments on behalf of XPS and where such commitments are made to the Supplier.

“The Contract” shall mean the contract between XPS and the Supplier consisting of the Purchase Order, these Terms and any other terms specified or referred to in the Purchase Order. The parties agree that any such other terms specified or referred to in the Purchase Order shall take precedence over these Terms in the event of a conflict.

“Goods” and “Services” respectively mean all goods and all services (as applicable) covered by the Purchase Order and/or any part(s) thereof.

“The Purchase Order” means XPS’s relevant order or written commitment made by an XPS Authorised Person for the supply of Goods and/or Services by the Supplier.

“The Supplier” means the supplier named on the Purchase Order.

“XPS” means XPS Pensions Consultancy Limited (Company No. 02459442) or another member of its group, as set out in the Purchase Order.

2. Basis of Contract

Unless expressly agreed in writing between the parties (including by an XPS Authorised Person in advance), these terms and conditions apply for all Goods and/or Services to be supplied by the Supplier to XPS under the Purchase Order, to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.

The Purchase Order constitutes an offer by XPS to purchase Goods and/or Services from the Supplier in accordance with these terms and conditions. The Purchase Order will be accepted, and the Contract formed on the earlier of (i) the Supplier issuing a written acceptance of the Purchase Order or (ii) the Supplier doing anything consistent with supplying the Goods and/or Services to XPS.

Except where expressly agreed by XPS in the Purchase Order or otherwise in writing by an XPS Authorised Person, XPS shall not be bound by any type of exclusivity with regards to the purchase of any Goods or Services or be obliged to purchase any minimum volume of Goods or Services.

3. Delivery

The Goods and/or Services shall be delivered and performed on the date(s) specified in the Contract, the Purchase Order, and/or any other authorised document specifying the Goods and/or Services. If the Goods and/or the Services are not so delivered or performed on or before the due date, or if it becomes clear the Goods and/or the Services cannot be delivered on or before that date, XPS may terminate the Contract in whole or in part without prejudice to any of its other rights under the Contract.

XPS may postpone delivery and/or performance of any Goods or Services by written notice given to the Supplier at any time before delivery and/or performance and shall pay the Supplier’s reasonable costs incurred directly because of such postponement.

Where providing Goods, the Supplier shall be responsible for delivering them to the delivery location specified, in the Purchase Order or otherwise agreed in writing by XPS. And for unloading the Goods at this delivery location.

XPS shall, on reasonable notice, allow the Supplier such access to its premises and shall provide such facilities as the Supplier may reasonably require to perform the Services and/or delivery of the Goods. The Supplier shall ensure that, to the extent the Services are to be performed at XPS’s premises, the Supplier’s employees and representatives observe all health and safety, security, and other requirements which XPS may reasonably impose. The cost of any necessary safety induction training will be borne by the Supplier.

4. Quality

The Supplier warrants that:

- (i) the Goods and Services shall be free from liens and defects, of satisfactory quality, shall conform to any specifications, drawings, samples, or other descriptions submitted to or specified by XPS, be fit for XPS’s intended purposes to the extent that such purposes are known or should reasonably be known to the Supplier and be compliant with all applicable legal and regulatory requirements.
- (ii) it will carry out the Services and provision of the Goods promptly, with reasonable skill and care and in accordance with all applicable laws, regulations and with such requirements as XPS may from time to time reasonably impose.
- (iii) provision of the Goods and/or Services will not infringe the rights of any third party.
- (iv) it shall comply with all instructions of XPS in providing the Goods and Services and always use personnel who are suitably qualified and experienced to provide the Goods and Services.

5. Passing of Title and Risk

The title to and risk in Goods shall pass to XPS when the Goods are delivered to it unless otherwise agreed in writing by XPS.

6. Contract Price and Payment

Unless otherwise expressly agreed in writing, the price for the Goods and Services stated in the Contract, the Purchase Order, and/or any other authorised document specifying the Goods and/or Services, shall be fixed and shall include all tax, duty, expenses, and charges (including delivery and insurance) chargeable in respect of the Goods and/or Services. Unless otherwise agreed in writing, XPS shall pay for the Goods and/or Services on or before the expiry of 30 calendar days from the receipt by XPS of a valid, proper, and undisputed invoice from the Supplier.

7. Termination/ Rejection

7.1 If the Supplier defaults in any of its obligations under the Contract, becomes insolvent, has a receiver appointed of its business or is compulsorily or voluntarily wound up or if XPS reasonably believes that any of such events may occur XPS shall be entitled, at its discretion without prejudice to any other remedy, to suspend performance of or terminate the Contract and in the event of termination to keep possession of any Goods or of any items belonging to XPS and to enter any premises of the Supplier for that purpose.

7.2 Without prejudice to any other remedy, if the Supplier breaches any of the terms of the Contract, XPS may, at its election:

- (i) Reject and return the Goods in whole or in part at the Supplier’s cost within a reasonable time after delivery notwithstanding prior payment. Risk in the Goods shall revert to the Supplier upon such rejection.
- (ii) Permit and/or compel the Supplier to repair or reinstate the Goods or re-perform the Services so that they conform with the Contract.
- (iii) Carry out or have carried out at the Supplier’s expense such work as is necessary to conform the Goods and/or Services to the Contract or to obtain substitute Goods and/or Services from another supplier.
- (iv) Require a refund from the Supplier of any sums paid in advance for Goods and/or Services not delivered in accordance with the Contract; and/or
- (v) claim damages for any additional costs, losses or expenses incurred by XPS because of the Supplier’s failure to comply with the Contract.

7.3 If XPS terminates the Contract (for any reason) the Supplier shall return to XPS all payments already made for the rejected Goods and/or Services. Where on termination XPS elects to keep or take any Goods, it shall pay an appropriate pro rata amount reflecting the value of the Goods or Services taking in to account the breach, but otherwise no compensation shall be payable to the Supplier on termination or rejection.

7.4 Termination of the Contract will not affect any of the parties’ rights and remedies accrued as at termination and any provision expressly or by implication intended to come into or continue in force on or after termination will remain in full force and effect.

8. Confidentiality

The Supplier will not at any time, without XPS's prior written consent, disclose to or use for any purpose other than performance of the Contract, any information acquired during the Contract concerning XPS's personnel, business, assets, affairs, customers, clients, suppliers, marketing & business development activities, products, or other business operations ("**Confidential Information**").

The Supplier shall keep the Confidential Information confidential, only disclose it to its employees, contractors or advisers who need to know such information for the purpose of them providing Goods and/or Services to XPS (subject to them being bound by equivalent obligations of confidentiality and the Supplier remaining responsible for their actions) or to the minimum extent required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9. Assignment and Subcontracting

The Supplier shall not sub-contract or assign any of its obligations or rights under the Contract without XPS's prior written consent.

10. XPS Materials

If XPS for the purposes of the Contract or Purchase Order issues materials to the Supplier, such materials shall be and remain the property of XPS ("**XPS Materials**"). The Supplier shall maintain the materials in good order and condition, use such XPS Materials solely in connection with the Contract or Purchase Order and any surplus XPS Materials shall be disposed of or returned as XPS directs. Damage to or waste of XPS Materials arising during the Supplier's possession of them shall be at the Supplier's expense. All XPS materials shall, unless otherwise directed by XPS in writing, be returned to XPS upon the earlier of delivery of the Goods, completion of all Services and/or termination of the Contract.

11. IPR

Any invention or discovery (whether patentable or not), copyright, design right, confidential know-how or other intellectual property rights ("IPR") conceived, produced, or reduced to practice by the Supplier in carrying out its duties under the Contract or Purchase Order which relates to XPS's business or is based on information or materials provided by XPS shall be XPS's exclusive property (including all IPR in any output of the Services) ("**Contract IPR**"). The Supplier assigns, with full title guarantee and free from third party rights, all Contract IPR, shall obtain waivers of all moral rights in the same and shall promptly, on XPS' request, do all such further things and execute all such documents as XPS may require giving effect to this assignment.

The Supplier indemnifies XPS against all liabilities, costs, expenses, damages, and losses (including all interest, penalties, legal and other professional costs) suffered or incurred by XPS as a result of any claim that any Contract IPR infringes upon the IPR of any third party.

12. Data Protection

The Supplier shall ensure that it, its employees, agents and permitted sub-contractors shall at all times during the Contract (or when providing Goods or Services to XPS) comply with all applicable data protection and privacy laws, including the General Data Protection Regulation 2018 (as retained in the UK), the Data Protection Act 2018 and XPS' own procedures and privacy policy (<https://www.xpsgroup.com/privacy-policy/>). If the Supplier is required under the Contract to process on XPS's behalf any personal data on behalf of XPS, the Supplier agrees to enter into a separate data processing agreement provided by XPS setting out the terms on which such data shall be processed (which shall then form part of the Contract).

13. General

Except to the extent required by law, XPS shall not under any circumstances be liable for loss of profits, loss of sales or business, loss of contract, loss of use, corruption of software, data or information, loss of or damage to goodwill or any indirect or consequential loss of the Supplier under the Contract. Except to the extent it cannot be limited by law, XPS' liability to the Supplier in respect of the Contract shall not exceed the amount paid or payable by XPS for the Goods and/or Services to which any liability relates.

The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on XPS' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

The failure of a party to enforce any provision of the Contract shall not constitute a waiver nor affect its right to enforce such and every other provision.

The Supplier shall not without XPS's written consent advertise, publicly announce or provide to any other party information relating to the existence of the Contract or Purchase Order or use XPS's name in any format for any promotion, publicity, marketing, or advertising purpose.

No variation or alteration of any kind to the Contract, the Purchase Order, and/or any other authorised document specifying the Goods and/or Services can be made except in writing duly signed on behalf of each party.

Any notices under the Contract must be:

- (i) in writing.
- (ii) delivered by hand or first-class post to the recipient's registered office or such other address for service agreed from time to time and deemed to have been received on delivery; or
- (iii) sent by email to such address for service as may be agreed from time to time (and notices to XPS will be validly served if sent to procurement@xpsplc.com and Legal@xpsplc.com) and deemed delivered on sending (provided that the sender has not received any server error, bounce-back, inbox-full or other error message indicating non-delivery).

If any provision or part-provision of the Contract is found by a court to be unlawful, unenforceable or void, that provision or part-provision will be severed, and the remainder of this Agreement will remain in force.

A person who is not a party to the Contract will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

The Contract shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales will have exclusive jurisdiction to settle any disputes arising out of or in connection with it.