

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions

"Authorised Representative"	means an employee of Hallmark holding the position of Manager or more senior position.
"Buyer"	means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
"Conditions"	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any Special Terms
"Contract"	means the contract for the sale of the Goods by the Seller to the Buyer.
"Goods"	means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.
"Seller"	means Hallmark Cards Plc
"Special Term"	means any special term or condition which is (1) agreed in writing between the Buyer and the Seller, and (2) the written record of any such agreement is signed by an Authorised Representative of the Seller
"Writing"	Means letter, telex, cable, facsimile, email transmission and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation. Unless the context otherwise requires words importing the singular number shall include the plural number and vice versa, words importing the masculine gender shall include the feminine gender and words importing persons shall include corporations.

2. Basis of the sale.

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer. All orders for Goods shall be deemed to be or include an offer by the Buyer to be bound by these Conditions. Acceptance of delivery of the Goods by the Buyer shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.2 No variation to these Conditions or the terms of the Contract shall be binding unless the variation is both (1) agreed in Writing between the authorised representatives of the Buyer and the Seller, and (2) the written record of the variation is signed by an Authorised Representative of the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representation concerning the Goods unless confirmed by an Authorised Representative of the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representation which is not so confirmed.
- 2.4 The Seller will make a search with a credit reference agency who will keep a record of that search. The Seller may provide data concerning the Buyer's trade performance to a credit reference agency who will share that information with other businesses when assessing applications for credit and fraud prevention.

3. Orders and specifications.

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by an Authorised Representative of the Seller.
- 3.2 The quantity, quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, costs (including legal fees on a full indemnity basis) and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, utility model, copyright, registered design, registered or unregistered trademark or trading style or other industrial or intellectual property rights or right relating to any confidential information or secret process of manufacture of any other person which results from the Seller's use of the Buyer's specification.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 Where Goods are to be produced to the Buyer's specification and/or are to bear the name of the Buyer or the Buyer's customer then the Buyer shall purchase at the contract price all such Goods whether in finished or unfinished form which the Seller holds.
- 3.7. Without prejudice to the generality of Condition 3.6, on the termination of any Contract between the Seller and the Buyer for the supply of Goods whether pursuant to clause 5.3.1 or 10.2 or otherwise the price shall become immediately due and payable whether the Goods are in finished or unfinished form and notwithstanding non-delivery thereof and upon payment made in accordance with this Clause the Buyer shall take immediate delivery thereof.
- 3.8 Except for Goods damaged in transit or alleged to be defective in quality the Seller will only accept the return of Goods with prior written permission of the Seller and if such permission is given, a handling charge of 20% of the invoiced value of the Goods returned will be imposed.

4. Price of the Goods.

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The Seller may invoice the Buyer for such increased price of the Goods.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of payment.

- 5.1 Subject to any Special Term the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after appropriation of the Goods to the Contract.
- 5.2 Subject to any special terms in Writing agreed between the Buyer and the Seller, the Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice or any longer period if specified in the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled whether in respect of the Contract or (at the Seller's option) of all Contracts between the Seller and the Buyer to:
 - 5.3.1 Cancel the Contract or Contracts or suspend any further deliveries without liability to the Buyer;
 - 5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3 Charge the Buyer interest from the date when payment becomes due on the amount unpaid at the statutory rate of interest on a judgement debt (and shall accrue at such rate after as well as before any judgement) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller will claim statutory interest at 8% above base rate and compensation under Late Payment of Commercial Debt Regulations 2002 when Buyer is a business and at 8% under S.69 of County Court Act 1984 when Buyer is a consumer.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the price of all Goods that have been delivered but not paid for shall become immediately due and payable notwithstanding any previous agreement to the contrary, and the Seller shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place specified in the Seller's quotation (if accepted by the Buyer) or the Buyer's Order (if accepted by the Seller).
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 The Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Goods are to be delivered in installments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods at all for any reason other than any cause beyond the Seller's reasonable control, or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6.1 Claims in respect of the Seller's failure to make delivery must be notified by the Buyer to the Seller in writing within 14 days of the earlier of (1) the date of the invoice in respect of such purported delivery, and (2) any date quoted for delivery of the Goods.
- 6.6.2 Claims in respect of short deliveries and/or defects in quality and/or damage to goods in transit must be notified by the Buyer to the Seller in writing within 7 days of receipt of the Goods.
- 6.7 If the Buyer fails to take delivery of the Goods (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) or the Buyer fails to give the Seller adequate delivery instructions at least 14 days before any date quoted for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 6.7.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and extra delivery, or
 - 6.7.2 Sell the Goods at the best price readily obtainable and, after deducting all reasonable storage (including insurance) and selling expenses, account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

- 7.1 Risk of damage for or loss of the Goods shall pass to the Buyer:
 - 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the goods are available for collection;
 - 7.1.2 or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods or was ready to tender delivery of the Goods.
- 7.2 Notwithstanding delivery and/or the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and any other charges / costs due and the price of all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods or any of them are still in existence and have not been sold or resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods (or such of the Goods as are still in existence and have not been sold or resold) to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 If the Buyer incorporates the Goods into other products the property in those other products shall vest in the Seller and the preceding sub-clauses of this clause shall apply with like effect to such other products.
- 7.7 All tools, patterns, designs, formulae, specifications and other materials or work produced or used by the Seller for the execution of any order of the Buyer shall remain the property of the Seller.
- 7.8 The intellectual property rights in all patterns, designs, formulae, specifications and other materials produced by the Seller, or by a third party for the Seller, in the fulfillment of any order placed by the Buyer shall remain the property of the Seller.

8. **Warranties and liability**

- 8.1 Except where the Goods are sold to a person dealing as a consumer (as defined by section 12 of the Unfair Contract Terms Act 1977 and/or Regulation 3(1) of the Unfair Terms in Consumer Contracts Regulations 1999) all warranties, conditions or terms expressed, implied, statutory or otherwise as to quality, condition or fitness for purpose of any of the Seller's products for any particular purposes or otherwise are hereby excluded to the fullest extent permitted by law.
- 8.2 Where the goods are sold under a consumer transaction (as defined by regulation 2(1) of the Consumer Transactions (Restrictions on Statements) Order 1976 as subsequently amended) the statutory rights of the Buyer are not affected by these Conditions.
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within twenty eight days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall be deemed to have accepted the Goods and the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 8.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other terms or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing shall be regarded as causes beyond the Seller's reasonable control:
 - 8.6.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.6.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.6.3 Acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.6.4 Import or export regulations or embargoes;
 - 8.6.5 Strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.6.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.6.7 Power failure or breakdown in machinery.

9. **Indemnity**

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, utility model, copyright, registered design, registered or unregistered trademark or trading style or other industrial or intellectual property rights or right relating to any confidential information or secret process of manufacture of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
 - 9.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

- 9.1.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 9.1.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do); 9.1.5 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 9.1.6 Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require mitigating or reducing any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. Insolvency of Buyer

- 10.1 This clause applies if:

- 10.1.1 The Buyer (being an individual) makes or is party to any composition or individual voluntary arrangement with its creditors or becomes subject to a deed of arrangement or an administration or becomes bankrupt, or the Buyer (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or is party to any composition or a company voluntary arrangement, or is subject to administration, or administrative receivers are appointed, or the Buyer (being a firm or partnership) makes any composition or a voluntary arrangement, or is subject to an administration order, winding up or receivership, or
 - 10.1.2 An encumbrance takes possession of, or a receiver is appointed over any of the property or assets of the Buyer, or
 - 10.1.3 The Buyer ceases, or threatens to cease, to carry on business or;
 - 10.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled whether in respect of the Contract or (at the Seller's option) of all Contracts between the Seller and the Buyer to cancel the Contract or Contracts or suspend any further deliveries without any liability of the Seller to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. The Seller shall also be entitled to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

11. Restrictions on Distribution.

- 11.1 The Goods are supplied by the Seller on the strict conditions that ;

- 11.1.1 the Buyer shall refrain from making active sales of the Goods outside the United Kingdom or the geographic area specified in the Seller's order confirmation or invoice delivered by the Seller (the specified area). For these purposes, active sales shall be understood to mean actively approaching or soliciting customers, including, but not limited to, the following actions: (a) visits, (b) direct mail, including the sending of unsolicited emails, and (c) advertising in media, on the internet or other promotions, where such advertising or promotion is specifically targeted at customers outside the United Kingdom or the specified area.
 - 11.1.2 the Buyer shall refrain from selling the Goods on the internet in any territory except where those sales are transacted on a website or domain registered in the name of the Seller's legal company name. For the avoidance of doubt, the Seller may not sell the Goods on any third party e-commerce marketplace site, including, but not limited to Amazon and Ebay.
- 11.2 The Buyer shall indemnify the Seller and any member of the group of companies of which the Seller is a member against any losses, claims, cost, action or proceedings which may be suffered by or be brought against the Seller or any of the group of companies of which the Seller is a member by any third party as a result of any breach of clause 11.1.

- 11.3 The buyer's obligation under clause 11.1 shall extend to the sale of or distribution by it to associated or subsidiary companies or to any individual or firm which is associated with the Buyer or to any business which the buyer knows or ought reasonably to have known intends to or does sell or distribute the Goods outside the specified area.
- 11.4 The Seller shall be entitled to enforce the Buyer's obligation under clause 11.1 whether or not any action has been commenced against it by a third party or if the Seller reasonably apprehends that a breach of the obligations is about to occur and notifies the Buyer accordingly.

12. General

- 12.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group of companies, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 12.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice may be delivered personally, sent by first class prepaid post or by email and shall be deemed to have been served if by delivery when delivered, if by first class post 48 hours after posting and if by email when dispatched.
- 12.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No forbearance, delay or indulgence by the Seller in enforcing the provisions of these Conditions or the Contract shall prejudice or affect the rights of the Seller. No right, power or remedy herein conferred upon or reserved for the Seller is exclusive of any other right, power or remedy available to the Seller and each such right, power or remedy shall be cumulative.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question and the Contract shall not be affected thereby.
- 12.5 The Buyer shall not assign or transfer its rights or obligations under the Contract whether in whole or in part without the prior written consent of the Seller.
- 12.6 The Contract shall be governed by the Laws of England and be subject to the jurisdiction of the English Courts.
- 12.7 In order to process the Buyer's application the Seller may supply the Buyer's relevant personal information to credit reference agencies ("CRA's) who will give the Seller information about the Buyer, such as about their financial history. This is done to assess creditworthiness and product suitability, verify identity, manage a Buyer's account, trace and recover debts and prevent criminal activity. The Seller may also continue to exchange information about the Buyer with CRAs on an ongoing basis, including about settled accounts and any debts not fully repaid on time. CRAs will share Buyer's information with other organisations. The identities of the CRAs, and the ways in which they use and share personal information, are explained in more detail at <http://www.experian.co.uk/crain/index.html>

13. Data Protection

See 'Addendum to Hallmark's Standard Terms and Conditions of Sale, Data Protection' below;

ADDENDUM TO HALLMARK'S STANDARD TERMS AND CONDITIONS OF SALE

DATA PROTECTION

This addendum shall replace any clauses relating to Data Protection Legislation (as defined below) in any agreements between the Parties existing as at the date of this Agreement (the Pre-Existing Contracts).

DEFINITIONS

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, either party may, at different times, be a Data Controller or a Data Processor in accordance with the provisions of the Pre-Existing Contracts (where **Data Controller** has the meaning given to the term 'controller' and **Data Processor** has the meaning given to the term 'processor' in the Data Protection Legislation).

1.3 Due to the nature of the Agreement, it is expected that personal data exchanged between the parties will be limited to contact details of personnel employed by the Parties. This will typically consist of name, work address, email address and telephone numbers. Hallmark will be the data controller of contact details of customer personnel.

1.4 Without prejudice to the generality of clause 1.1, the Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Data Processor for the duration and purposes of this Agreement.

1.5 Without prejudice to the generality of clause 1.1, the Data Processor shall, in relation to any Personal Data processed in connection with the performance by the Data Processor of its obligations under this Agreement:

- (a) process that Personal Data only on the written instructions of the Data Controller unless the Data Processor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor to process Personal Data (**Applicable Laws**). Where the Data Processor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Data Processor shall promptly notify the Data Controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Data Processor from so notifying the Data Controller;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Data Controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
- (e) assist the Data Controller, at the Data Processor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Data Controller without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause

1.6 The Data Processor shall obtain the prior written consent of the Data Controller:

- (a) before appointing any third party processor of Personal Data under this Agreement; and/or
- (b) before replacing any third party processor of Personal Data under this Agreement that the Data Controller has previously consented to.

Where the Data Controller so consents, the Data Processor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause and will require the third-party processor to enter into a written agreement incorporating terms which are substantially similar to those set out in this clause with each further processor which the third-party processor appoints. As between the Data Controller and the Data

Processor, the Data Processor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

- 1.7 If at any time the parties are acting as joint Data Controllers under this Agreement each party hereby confirms that it has entered or (as the case may be) will enter with any third-party processor that it chooses to appoint into a written agreement incorporating terms which are substantially similar to those set out in this clause and will require the third-party processor to enter into a written agreement incorporating terms which are substantially similar to those set out in this clause with each further processor which the third-party processor appoints.
- 1.8 Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).