

Interpretation

Definitions. In these Conditions, the following definitions apply:

“**Business Day**” means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

“**Commencement Date**” has the meaning set out in clause 1.2;

“**Conditions**” means these terms and conditions as amended from time to time;

“**Contract**” means the contract between Xaar and the Provider for the supply of Goods and/or Services in accordance with these Conditions;

“**Data Protection Legislation**” means UK GDPR and the Data Protection Act 2018

“**Deliverables**” means all documents, products and materials developed by the Provider or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

“**Goods**” means the goods (or any part of them) set out in the Order.

“**Goods Specification**” means any specification for the Goods, including performance requirements and any related plans and drawings, that is agreed in writing by Xaar and the Provider;

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“**Order**” means Xaar’s order for the supply of Goods and/or Services, as set out in Xaar’s purchase order form;

“**Provider**” means the person or firm from whom Xaar purchases the Goods and/or Services;

“**Services**” means the services, including without limitation any Deliverables, to be provided by the Provider under the Contract as set out in the Service Specification;

“**Service Specification**” means the description or specification for Services set out in the Order or otherwise agreed in writing by Xaar and the Provider;

“**Xaar**” means XaarJet Limited registered in England and Wales with company number 03375961; and including all its group companies and subsidiaries (“subsidiaries” having the meaning given in section 1159 Companies Act 2006 (as amended) and “Group” meaning each and any subsidiary or holding company from time to time of Xaar plc)

“**Xaar Materials**” has the meaning set out in clause 4.2.9.

1. Basis of Contract

1.1 The Order constitutes an offer by Xaar to purchase Goods and/or Services from the Provider in accordance with these Conditions.

1.2 The Order shall be deemed to be accepted on the earlier of the following, at which point, and on which date the Contract shall come into existence (“Commencement Date”):

1.2.1 the Provider issuing written acceptance of the Order; or

1.2.2 any act by the Provider consistent with fulfilling the Order.

1.3 These Conditions apply to the Contract to the exclusion of any other terms that the Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Provider waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Provider that is inconsistent with these Conditions.

1.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2. Supply of Goods

2.1 The Provider shall ensure that the Goods shall: correspond with their description and any applicable Goods Specification;

2.1.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Provider or made known to the Provider by Xaar, expressly or by implication, and in this respect Xaar relies on the Provider’s skill and judgement;

2.1.2 where applicable, be free from defects in design, materials and workmanship and remain so for the duration of any express warranty given by the Provider or for 12 months after delivery, whichever is the longer period; and

2.1.3 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.2 The Provider shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

2.3 Xaar shall have the right to inspect and test the Goods at any time before delivery.

2.4 If following such inspection or testing Xaar considers that the Goods do not conform or are unlikely to comply with the Provider’s undertakings at clause 2.1, Xaar shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance.

2.5 Notwithstanding any such inspection or testing, the Provider shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Provider’s obligations under the Contract, and Xaar shall have the right to conduct further inspections and tests after the Provider has carried out its remedial actions.

3. Delivery of Goods

3.1 The Provider shall ensure that:

3.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

3.1.2 each delivery of the Goods is accompanied by a delivery note which shows the Provider’s name and relevant employee contact details, date of the Order, the Order number, the type and quantity of the Goods, the Xaar part number of the Goods, certificate of analysis/conformity (where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

3.1.3 if the Provider requires Xaar to return any packaging material for the Goods to the Provider, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Provider at the cost of the Provider.

3.2 The Provider shall deliver the Goods:

3.2.1 on the date specified in the Order and time for delivery shall be of the essence; and

3.2.2 during Xaar’s normal hours of business, which are 08:00hrs to 15:30hrs on a Business Day, or as instructed by Xaar.

3.3 Unless stated otherwise in the Order, delivery of the Goods shall be completed when the Provider places the Goods at the disposal of Xaar at the Provider’s premises or at another named place.

3.4 Any rejected Goods shall be returnable at the Provider’s risk and expense. If the Provider delivers more or less than the quantity of Goods ordered, and Xaar accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

3.5 Unless stated otherwise in the Order title and risk in the Goods shall pass to Xaar on completion of delivery.

4. Supply of Services

4.1 The Provider shall provide the Services in accordance with the terms of the Contract and meet any performance dates for the Services specified in the Order or notified to the Provider by Xaar.

4.2 In providing the Services, the Provider shall: co-operate with Xaar in all matters relating to the Services, and comply with all instructions of Xaar;

4.2.1 perform the Services with the best care, skill and diligence in accordance with best practice in the Provider’s industry, profession or trade; use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Provider’s obligations are fulfilled in accordance with this Contract;

4.2.2 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Provider by Xaar;

4.2.3 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

4.2.4 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Xaar will be free from defects in workmanship, installation and design;

4.2.5 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

4.2.6 observe all health and safety rules and regulations and any other security requirements that apply at any of Xaar’s premises;

4.2.7 hold all materials, equipment and tools, drawings, specifications and data supplied by Xaar to the Provider (“Xaar Materials”) in safe custody at its own risk, maintain Xaar Materials in good condition until returned to Xaar, and not dispose of or use Xaar Materials other than in accordance with Xaar’s written instructions or authorisation. For the avoidance of doubt, ownership of all Xaar Materials shall remain the exclusive property of Xaar in accordance with Clause 8.6 and title in and to all materials and tooling purchased from the Provider by Xaar shall be transferred to Xaar in accordance with Clause 3.5; and

4.2.8 not do or omit to do anything which may cause Xaar to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Provider acknowledges that Xaar may rely or act on the Services.

5. Xaar Remedies

- 5.1 If the Provider's delivery of the Goods and/or performance of the Services is delayed, or if Xaar discovers defects in the Goods, hereunder non-compliance with the requirements and obligations in clause 3.1 Xaar shall, without limiting its other rights or remedies, be entitled, at Xaar's discretion, to agree a revised delivery date with the Provider, or, if in Xaar's opinion this is not possible or practicable, to exercise one or more of the following rights:
- 5.1.1 to recover from the Provider any costs or expenditure incurred by Xaar in obtaining substitute goods and/or services from a third party;
- 5.1.2 to claim damages for any additional costs, loss or expenses incurred by Xaar which are in any way attributable to the Provider's delay of delivery or to the defective Goods;
- 5.1.3 where Xaar has paid in advance for Services that have not been provided by the Provider and/or Goods which have not been delivered by the Provider, to have such sums refunded by the Provider;
- 5.1.4 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Provider at the Provider's own risk and expense;
- 5.1.5 to require the Provider to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.1.6 to refuse to accept any subsequent delivery of the Goods until the Provider can demonstrate to the satisfaction of Xaar that the Goods meet the requirements set out in clause 2.1;
- 5.1.7 to claim damages for any additional costs, loss or expenses incurred by Xaar arising from the Provider's failure to supply Goods in accordance with clause 2.; and
- 5.1.8 to terminate the Contract with immediate effect by giving written notice to the Provider.
- 5.2 Xaar's right to exercise one or more of the remedial rights listed in clause 5.1 shall apply whether or not Xaar has accepted the Goods.
- 5.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Provider.
- 5.4 Xaar's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 6. Xaar's Obligations**
- 6.1 Xaar shall:
- 6.1.1 provide the Provider with reasonable access at reasonable times to Xaar's premises for the purpose of providing the Services; and
- 6.1.2 provide such information as the Provider may reasonably request for the provision of the Services and Xaar considers reasonably necessary for the purpose of providing the Services.
- 7. Charges and Payment**
- 7.1 The price for the Goods:
- 7.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Provider's published price list in force at the Commencement Date; and
- 7.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Xaar. No extra charges shall be effective unless agreed in writing and signed by Xaar.
- 7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Provider in respect of the performance of the Services. Unless otherwise agreed in writing by Xaar, the charges shall include every cost and expense of the Provider directly or indirectly incurred in connection with the performance of the Services.
- 7.3 In respect of Goods, the Provider shall invoice Xaar on or at any time after completion of delivery. In respect of Services, the Provider shall invoice Xaar in accordance with any agreed payment schedule relating to the Order. Each invoice shall include such supporting information required by Xaar to verify the accuracy of the invoice, including but not limited to the Provider's name, the relevant purchase order number, the type and quantity of the Goods and/or Services and the Xaar Part number where applicable.
- 7.4 In consideration of the supply of Goods and/or Services by the Provider, Xaar shall pay the invoiced amounts within 60 days following the end of the month in which a correctly rendered invoice is received, to a bank account nominated in writing by the Provider.
- 7.5 All amounts payable by Xaar under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Provider to Xaar, Xaar shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 If Xaar fails to pay any amount properly due and payable by it under the Contract, the Provider shall have the right to charge interest on the overdue amount at the rate of four per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that Xaar disputes in good faith.
- 7.7 The Provider shall maintain complete and accurate records of the time spent and materials used by the Provider in providing the Services, and the Provider shall allow Xaar to inspect such records at all reasonable times on request.
- 7.8 Xaar may, without limiting its other rights or remedies, set off any amount owing to it by the Provider against any amount payable by Xaar to the Provider under the Contract
- 7.9 No extra charges shall be effective unless agreed in writing with Xaar.
- 8. Intellectual Property Rights**
- 8.1 In respect of the Goods and any goods that are transferred to Xaar as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Provider warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Xaar, it will have full and unrestricted rights to sell and transfer all such items to Xaar.
- 8.2 The Provider hereby assigns to Xaar, with full title guarantee and free from all third party rights, all Intellectual Property Rights created by or on behalf of the Provider in the course of providing the Services, including the products of the Services and the Deliverables.
- 8.3 The Provider shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.4 The Provider shall, promptly at Xaar's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Xaar may from time to time require for the purpose of securing for Xaar the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Xaar in accordance with clause 8.2.
- 8.5 Any and all Intellectual Property Rights owned by Xaar which are permitted by Xaar to be used by the Provider for the performance of its obligations under these Conditions and/or which are incorporated into the construction or operation of the Goods shall remain the exclusive property of Xaar. The Provider shall not use or incorporate such Intellectual Property Rights into any other goods or services without the prior written approval of Xaar. Xaar shall be under no obligation to grant such permission.
- 8.6 All Xaar Materials are and shall remain the exclusive property of Xaar.
- 9. Indemnity**
- 9.1 The Provider shall keep Xaar indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Xaar as a result of or in connection with:
- 9.1.1 any claim made against Xaar by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Provider, its employees, agents or subcontractors;
- 9.1.2 any claim made against Xaar by a third party arising out of, or in connection with, the supply of the Goods or 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 Provider, its employees, agents or subcontractors; and
- 9.1.3 any claim made against Xaar for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (save to the extent such claim relates exclusively to Intellectual Property Rights owned by Xaar and which are permitted by Xaar to be used by the Provider for the performance of its obligations under these Conditions and/or which are incorporated into the construction or operation of the Goods in accordance with clause 8.5).
- 9.2 For the duration of the Contract, the Provider 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 Xaar's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.3 This clause 9 shall survive termination of the Contract.
- 10. Confidentiality**
- 10.1 In cases where Xaar and the Provider have entered into a separate non-disclosure agreement ("NDA") the terms of the NDA shall apply in addition to this clause 10. In the event of any conflict between the NDA and this clause 10, the terms of the NDA will take precedence.

- 10.2 Without prejudice to clause 10.1, a party (“Receiving Party”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (“Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 10.3 The restrictions set out in clause 10.2 shall cease to apply to any such confidential information which shall become available to the public generally otherwise than through a breach of a duty of confidentiality owed to the Disclosing Party provided that neither party shall be restricted from disclosing such confidential information or any part of it pursuant to a judicial or other lawful government order, but only to the extent required by such order and subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.
- 10.4 This clause 10 shall survive termination of the Contract.
- 11. Termination**
- 11.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.1.1 the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach; or
- 11.1.2 the other party is unable to pay its debts when they fall due, is insolvent or enters into any arrangement with its creditors for the repayment of its debts, an administrator, receiver, liquidator, manager or similar officer is appointed over all or any substantial part of its assets, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (other than for the purposes of solvent amalgamation or reconstruction), or if it ceases or threatens to cease business or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 11.2 Without limiting its other rights or remedies, Xaar may terminate the Contract:
- 11.2.1 in respect of the supply of Services, by giving the Provider four weeks’ written notice;
- 11.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Provider, in which case Xaar shall pay the Provider fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss; and/or
- 11.2.3 with immediate effect by giving written notice if the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.3 In any of the circumstances in these Conditions in which Xaar may terminate the Contract, where both Goods and Services are supplied, Xaar may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 12. Consequences of Termination**
- 12.1 On termination of the Contract or any part of it for any reason:
- 12.1.1 where the Services are terminated, the Provider shall immediately deliver to Xaar all Deliverables, whether or not then complete, and return all Xaar Materials. If the Provider fails to do so, then Xaar may without limiting its other rights or remedies enter the Provider’s premises and take possession of them. Until they have been returned or delivered, the Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 12.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13. Publicity**
- 13.1 The Provider shall not, without the prior written permission of Xaar, advertise or disclose to any third party that it is providing Goods and/or Services to Xaar or use any Xaar Materials or Intellectual Property Rights owned by Xaar for publicity purposes in any literature, at any exhibitions, showcases or otherwise.
- 14. Compliance**
- 14.1 The Provider warrants that it shall comply with all applicable:
- 14.1.1 laws relating to anti-bribery and corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977;
- 14.1.2 anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- 14.1.3 economic and trade sanctions laws, regulations and rules, including those promulgated by the Office of Foreign Asset Control of the U.S. Department of the Treasury and by HM Treasury in the United Kingdom.
- 14.2 Xaar may suspend or terminate these Conditions if it has reason to believe that the Provider is breaching or failing to comply with the provisions of this clause 14.
- 15. Data Protection**
- 15.1 The Provider shall, in performing its obligations under the Order, comply in all respects with the Data Protection Legislation and with the requirements of this clause 15.
- 15.2 Where the Provider acts as data processor under the Order it shall:
- 15.2.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of the personal data and against actual loss or destruction of, or damage to, personal data;
- 15.2.2 process personal data only in accordance with the Order, Xaar’s instructions and having regard to the provisions of the Data Protection Legislation; and
- 15.2.3 not disclose the personal data to any third party or transfer the personal data outside the EEA without the Xaar’s prior written consent. Data processor and personal data shall have the meaning set out in the Data Protection Legislation.
- 16. General**
- 16.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Provider from supplying the Goods and/or Services for more than four weeks, Xaar shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Provider.
- 16.2 **Assignment and subcontracting:**
- 16.2.1 The Provider shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Xaar.
- 16.2.2 Xaar may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 16.3 **Notices:**
- 16.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- 16.4 **Waiver and cumulative remedies:**
- 16.4.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.5 **Severance:**
- 16.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Xaar.
- 16.9 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.10 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.