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1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Certification Scheme: a conformity assessment system related to specified products, to which a set of specified requirements, specific rules and procedures apply.

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions & The Order for Services.

Client: the person or firm who purchases Services from the Supplier.

Client Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Client.

Order: the Client's order for Services (and description or specification of the Services) as set out in the Client's written request for services or agreement with the Supplier for the provision of the Services.

Services: the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Order.

Supplier: HPi-CEproof Limited registered in England and Wales with company number 7217086.

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision. Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.


2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Client using reasonable care and skill and in accordance with the Order in all material respects, save that the Supplier may vary the methods, procedures, techniques, personnel and sources of information utilised in the provision of the Services at its discretion and will notify the Client of any such variation.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the specification of the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

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3.4 The Supplier makes no guarantee or warranty that any product(s) submitted for test as part of the Services will pass such test, even where the Supplier has undertaken preparatory work. Furthermore, due to national variations in implementation and interpretation of legislation across Europe, the Supplier cannot offer any guarantee or warranty that certificates will be accepted by a national authority.

4. Client's obligations

4.1 The Client shall:


- (a) ensure that any information it provides in respect of the specification of the Services it requires are complete and accurate and shall co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions, visas, permits and consents which may be required for the Services before the date on which the Services are to start;
- (e) comply with all applicable laws, including health and safety laws;
- (f) carry out all product testing required in connection with the Services (other than product tests which The Order expressly requires to be undertaken by the Supplier);
- (g) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (h) comply with any additional obligations set out in the Order; and
- (i) comply with the requirements of clause 11 (Certification Agreement).

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

5. Charges and Payment

5.1 The Supplier shall be entitled to increase the price of the Services to reflect any increase in the costs to the Supplier of providing the Services including any increase in costs to the Supplier arising from any variation in the statute, regulations or guidelines applicable to the Services or any Deliverable.

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- 5.2 The Client shall pay each invoice submitted by the Supplier in full and in cleared funds to a bank account nominated in writing by the Supplier within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Client. Time for payment shall be of the essence of the Contract.
- 5.3 Unless expressly stated otherwise, all amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.4 If the Services are not quoted and invoiced in pounds Sterling (GBP), the Supplier reserves the right to increase the invoiced amounts if the quoted or invoiced currency drops by 10% or more against Sterling. (The historical figures of the website www.xe.com shall be used for comparison).
- 5.5 All amounts payable by the Client under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights


- 6.1 All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Client) shall be owned by the Supplier and all certificates, statements, reports and other Deliverables issued by the Supplier shall remain the property of the Supplier unless agreed otherwise in writing by the Supplier.
- 6.2 Subject to the Client complying with clause 11, the Supplier grants to the Client, or shall procure the grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client.

7. Data protection and data processing

To the extent that either party processes personal data in connection with the Services, both parties will comply with all applicable requirements of the Data Protection Act 2018.

8. Limitation of liability

- 8.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; and (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1, the Supplier's total liability to the Client shall not exceed £100,000. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 8.3 This clause 8.3 sets out specific heads of excluded loss:

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- (a) Subject to clause 8.1, the types of loss listed in clause 8.3(b) are wholly excluded by the parties, but the types of loss and specific losses listed in clause 8.3(c) are not excluded.
- (b) The following types of loss are wholly excluded: (i) Loss of profits; (ii) Loss of sales or business; (iii) Loss of agreements or contracts; (iv) Loss of anticipated savings; (v) Loss of use or corruption of software, data or information; (vi) Loss of or damage to goodwill; (vii) Indirect or consequential loss; or (viii) Any loss which arises two years or more after the date on which the relevant report, certificate or other final Deliverable is issued to the Client; or (ix) any loss arising from a product test, unless such product test is expressly required by the Order to be carried out by the Supplier.
- (c) The following types of loss and specific loss are not excluded: Sums paid by the Client to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract.

8.4 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.5 Unless the Client notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 28 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.6 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:


- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [10] days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

9.2 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. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. General

10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 **Confidentiality.**

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- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except that each party may disclose the other party's confidential information: (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.2; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or national accreditation body.
- (b) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (c) The client consents to the supplier sharing project information with HPi Verification Services (Ireland) Ltd if the Supplier considers it necessary to perform its obligations.
- (d) Unless agreed otherwise by the parties, the Supplier shall be entitled to include references to the Services and the fact that it has supplied them to the Client in its promotional materials.


10.3 **Assignment.** The client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Supplier.

10.4 **Governing law and jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

11. Certification Agreement

11.1 The Client undertakes and covenants to the Supplier:

- (a) where the Supplier issues a formal certificate or report in its official capacity as an UK Approved or EU Notified Body, to abide by the instructions stated on the certificate or report regarding the displaying of the Supplier's Approved/Notified Body identification number;
- (b) not to misuse or misrepresent the scope of any document issued by the Supplier. Misuse includes defacing/modifying the document in any way and claiming it applies to other products, however, similar;
- (c) to fulfil the requirements of any certificate, Certification Scheme and the Supplier including without limitation:
 - (i) implementing appropriate changes when they are communicated by the Supplier;
 - (ii) complying with the requirements of the Supplier when making any reference to the certification in communication media such as documents, brochures or advertising; and
 - (iii) complying with any requirements relating to the use of marks of conformity and the supply of product information.
- (d) where the certification applies to ongoing production (as opposed to individual assessment) to ensure that each product continues to fulfil the product requirements.
- (e) where the certification covers surveillance and/or monitoring of ongoing production (conformity assessment modules A2, C1, C2, D, E, F, H), the client agrees to the Supplier conducting ongoing surveillance visits.

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Furthermore where reasonably considered necessary by the Supplier, the Client agrees to the Supplier conducting unexpected visits to verify continuing compliance of the products covered by the certification;

- (f) to make all necessary arrangements for:
- (i) any evaluation and surveillance (if required) by the conformity assessment module, including the provision of any documentation or records and access to the Client's premises, equipment, locations, areas, personnel and subcontractors;
 - (ii) the participation of observers, if required, including personnel from the National Accreditation Body; and
 - (iii) the recording and investigating of complaints related to products covered by the certification and to make such records available to the Supplier;
- (g) not to use any certification in such a manner as to bring the Supplier or any agents of the Supplier into disrepute or to make any statement regarding any certification which the Supplier deems to be misleading or made without proper authorisation;
- (h) to only supply complete and accurate copies of any certification documents to third parties, or as otherwise specified in the relevant Certification Scheme;
- (i) to take appropriate action with respect to any complaints and any deficiencies found in products affecting compliance with certification requirements and to maintain a written record of such actions; and
- (j) to inform the Supplier, without delay, of proposed changes that may affect its ability to conform to the certification requirements including:
- (i) Legal, commercial, organisational status or ownership
 - (ii) Organisation and management (eg key managerial, decision-making or technical staff)
 - (iii) Modifications to the product or production methods
 - (iv) Contact addresses and/or production site(s)
 - (v) Changes to the approved quality management system

11.2 Without prejudice to the other rights and remedies available to the Supplier under the Contract, the Client acknowledges and agrees that failure to comply with any of its obligations under or in connection with the Contract will require corrective action to be implemented and may include suspension and/or withdrawal of the certificate(s) (or other Deliverables) and notification to relevant authorities.

11.3 The Client acknowledges and agrees that any certificate, statement, report, document or other Deliverable issued by the Supplier may not remain valid where the Client has modified the particular product which the Deliverable relates to.

11.4 Upon suspension, invalidation, withdrawal or termination of any certification, the Client shall discontinue its use of all advertising matter, branding or marketing materials that contains reference thereto and shall take all actions as are required by the Certification Scheme or the Supplier, including the return of certification documents, cessation of use of the Approved/Notified Body ID number or any other required measure.

11.5 The Client acknowledges and agrees that any document issued by the Supplier, that is mandated by legislation as an official attestation of compliance, will be listed on the Supplier's website for public viewing.