

EY GDS Spain Purchase Order Terms & Conditions

[Note to draft: under Spanish legislation, (i) reference shall be made to these terms and conditions in the relevant purchase order, and (ii) these terms and conditions shall be attached to the relevant purchase order]

The following terms and conditions shall apply as between the EY entity as set out in the Purchase Order (“EY”) and Supplier. Save as set out in the paragraphs below, in the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Purchase Order and any other document relating to this transaction, including any terms and conditions in any invoice, proposal, or other Supplier document, the terms and conditions of this Purchase Order shall govern.

For avoidance of doubt, the aforementioned terms and conditions shall only apply and be binding upon the parties to this Purchase Order where there is no mutually executed agreement in place between the parties to this Purchase Order to govern the purchase of the item/s or services described in it, prior to the issuance of the Purchase Order (in which case, the terms of such mutually executed agreement shall prevail over the terms of this Purchase Order).

The word “including” shall not limit the sense of the preceding words.

1. **Scope of Goods and Services.** Supplier shall provide the goods (“Goods”) or work products (“Work Products”) or perform the services, together with any other incidental activities which are reasonably necessary in order to carry out the same (the “Services”) at the times, price and at the locations (“Locations”) and as otherwise set out in this Purchase Order for the benefit of EY during the term of this Purchase Order (“Term”). In the event of any change in the specification or design, Supplier will obtain EY’s prior written approval before supply. Upon placement of a Purchase Order by EY, any and all Goods and Work Products ordered, leased or purchased, whether tangible or intangible, shall be deemed identified. EY may reduce the amount of Goods, Work Products or Services ordered upon reasonable notice, and shall pay Supplier pro-rata for the reduced order at the rate specified herein, without penalty. Risk of loss shall pass to EY only upon delivery to EY. Orders not shipped on the date set out in the Purchase Order, or promised by Supplier, are subject to cancellation at EY’s option. Orders will be delivered at the applicable EY Location within the agreed timelines and adherence with the specifications, failing which liquidated damages equivalent to 0.5% of the value of the Purchase Order shall be deducted as genuine estimate of loss suffered by EY for failure on part of the Supplier for each week of delay or part thereof. The same shall be deducted from the payments against invoices of the Supplier. Unless otherwise agreed in writing, the Supplier shall be solely responsible for all costs of shipment to the delivery location. Supplier shall be responsible for clearing any debris created as a result of provision of the Services.
2. **Supplier Personnel.** All personnel, including without limitation, contractors, freelancers, etc. used by the Supplier to provide Services to EY shall at all times be employees of the Supplier and not of EY, and Supplier shall have sole responsibility for its employees under applicable labour and social security laws including as to remuneration, overtime, bonus, management, safety, insurance, health and safety and social security contributions. In no event shall EY have any liability for Supplier’s employees providing the Services to EY, and EY shall not have any liability for any claims made by any employee or the Social Security employed by Supplier in connection with the provision of Services under this PO. The Supplier shall be totally responsible for payment of wages/salaries/social security contributions for the Supplier’s personnel so deployed at EY Locations and for compliance with all legal/statutory requirements as may be applicable/enforced from time to time. The Supplier’s personnel shall not be treated as the EY’s staff/employee for any purpose whatsoever, Supplier acknowledges and agrees that it shall be solely liable with respect to any obligations under applicable laws towards such personnel deployed by the Supplier. The Supplier shall submit a declaration every month (in the format to be provided upon request), that all statutory payments have been paid by Supplier and also a list of personnel covered under such statutory payments, along with the payment advice. EY shall be entitled to withhold payment under this Purchase Order until such time the above proof of payment of all statutory payments and required declaration is furnished to EY. Supplier shall maintain all records required to be maintained under statutory enactments and EY authorized representatives shall be entitled to audit and inspect any such records at any time. The Supplier shall ensure that its team shall adhere to norms and policies (like employee conduct rules/ dress codes/ office decorum, etc.) of EY during the Term. Safety and security of all persons deployed and materials placed by Supplier or its agents for the project will be at the risk and responsibility of Supplier. The Supplier shall indemnify EY against all claims and costs made upon EY as a result of Supplier’s non-compliance with these provisions.

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3. **Acceptance.** Upon performance by Supplier under this Purchase Order shall be deemed acceptance of all the terms and conditions set forth herein. All Goods, Work Products and/or Services received by EY will be subject to inspection, validation and rejection during the 30-day period following delivery, and rejected material, including overruns, will be returned at Supplier's risk, loss and expense, including transportation charges. Any damaged or faulty items supplied shall be replaced with a new item (in the case of Goods or Work Products) or reperformed (in the case of Services) at Supplier's sole cost and expense without undue delay and in any event within 30-days of the date EY notifies Supplier of its rejection and liable for imposition of liquidated damages. It is clarified that time taken by EY to communicate its rejection shall be excluded from calculation of liquidated damages. Any and all Goods and Work Products (as applicable) shall be properly packaged and conform to the descriptions, quantity, price and specifications (if any) set out herein. Failure to reject the Goods, Work Products and/or Services within the 30-day period shall not be deemed an acceptance thereof. Payment by EY shall constitute neither acceptance of the Goods, Work Products and/or Services supplied hereunder, nor a waiver of EY's rights in respect of the same. The Supplier agrees that EY shall only be liable to pay for the actual Goods/Work Products supplied and/or Services performed, and only if the Goods/Work Products and/or Services are delivered to the full satisfaction of EY. EY reserves the right to deduct and/or withhold, part or full payment of the amount payable to the Supplier and/or reject the invoices in this relation, if the quality does not meet the specifications and/or is not up to agreed specifications and applicable standards. The Supplier agrees that such deductions shall be adjusted against amounts in the Supplier's invoices.
4. **Warranties.** Supplier represents, warrants and undertakes to EY that: (1) the Goods, Work Products and/or Services shall at all times comply with EY's specifications, if any, and applicable law; (2) it shall remedy all defects in and Works Products or Services identified by EY during the agreed defect liability/warranty/AMC period (as applicable) (and where no defect liability period has been agreed, such period shall be 12 months from date of completed performance); (3) the Services and the use by EY and the EY Network Members of the Goods and Work Product and/or any other materials provided by Supplier shall not infringe the intellectual property rights or other rights of any third party; (4) Supplier shall perform its obligations under this Purchase Order professionally and competently and in a good and workmanlike manner, consistent with the highest applicable industry practices; (5) Supplier shall obtain all consents, clearances, permissions and licenses necessary to carry out all of its obligations under this Purchase Order; (6) in the event Supplier is not the manufacturer of the Goods and or Work Products (a) Supplier is an authorized reseller of the OEM and the OEM has specifically authorized the supply of the material to EY; and (b) all warranties provided by the manufacturer shall pass through to EY for its benefit; (7) Supplier shall provide any Goods, Work Products and/or Services in accordance with the requirements set out in this Purchase Order and in compliance with any EY codes or policies as notified to Supplier by or on behalf of EY from time to time and using personnel with knowledge and experience which is sufficient for the tasks assigned to them; and (8) None of the Goods have been declared "End of Sale" as at the date of their supply and if any Goods are declared "End of Support" during the validity of the warranty/AMC period Supplier shall continue to be support such Goods until the expiry of the warranty/AMC period, failing which Supplier shall be replace such Goods with an equivalent or higher specification/functionality product acceptable to EY at no additional cost and within 7 days of such declaration of End of Support unless any other time is agreed in writing by EY.

Any of Supplier's disclaimers, any limitation of liability and/or any reduction of any applicable statute of limitations shall be deemed of no effect unless explicitly set out in this Purchase Order. In the event of non-conformance with any of the above warranties, Supplier will correct any such non-conformance and, if unable to do so promptly, shall (at EY's sole option) replace the Goods and/or Work Product or re-perform the non-conforming Services (as relevant) or promptly refund any fees paid by EY. Any Goods and/or Work Products supplied in excess and not require pursuant to this Purchase Order shall be taken back by Supplier at no cost to EY.

5. **Pricing and Invoices.** Where Services are provided on a day-rate basis, Supplier shall on request from EY, provide timesheets and breakdowns of time spent and shall charge on the basis of an 8 hour day, and apply pro-rata for periods of less than 8 hours.

Invoices will be payable by EY through electronic bank transfer within 60 days from the date of receipt of a correct, undisputed and properly due invoice. Invoices can be raised only upon receipt of goods/materials and

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confirmation of acceptance by EY. In case of Services, invoices shall be raised only in accordance with the agreed payment milestones. The Supplier to send the invoice on the e-invoicing tool or email Id as may be communicated by EY from time to time. Further, the Supplier shall also send a hard copy of the invoice and supporting documents to the address that may be communicated by EY from time to time.

If any amount, in the absence of a dispute and through no fault of the Supplier, is not paid on the due date, EY shall pay interest on such unpaid amount at an annual rate of two percent (2%) per annum, calculated from and including the sixty-first (61st) day. The final applicable interest as agreed by the parties shall be payable by EY upon submission of a separate invoice to be raised by the Supplier.

NOTE for REAL ESTATE orders: EY shall retain 5% of charges due under an invoice in respect of all Services relating to real estate for the duration of the agreed defects liability period (and where no defect liability period is specified, such period shall be 12 months). EY shall not be liable for any amounts not explicitly set out in this Purchase Order or any penalties or interest due on any taxes. EY may, without limiting its other rights or remedies, set off any amount owing to it by Supplier against any amount payable by EY to Supplier under this Purchase Order.

6. **Tax.** All amounts set out in the Purchase Order are inclusive of local applicable taxes (including value added tax), levies, charges, cess, etc. ("**Tax**"), which shall be calculated at the rate and in the manner prescribed by applicable law and shall include receipt of a valid applicable tax invoice (or equivalent). All invoices shall comply with the applicable legislation. The Supplier shall submit documents as requested by EY to arrive at the determination of extent of withholding taxes to be deducted from the payment against the invoices. Where the required documents are not provided, the rate of withholding tax shall be determined by EY in accordance with applicable law and the Supplier will not dispute the same.

If the Supplier is entitled to any exemption from withholding tax or a lower rate of withholding tax, the documentation confirming such exemption or the lower rate, as the case may be, shall be shared with EY promptly to avail the benefit of exemption of the lower rates of withholding to the Supplier. The exemption or the lower rates of withholding will be applied only for payments or credits to the Supplier made after the date of furnishing the required documentation and not retrospectively.

Failure on part of the Supplier resulting in denial of input tax credit shall be recovered from the supplier, along with applicable interest and penalty.

For the avoidance of doubt, EY shall not be liable for any taxes based upon the Supplier's net income or any tax payments and filings in relation to the Supplier's own employees or sub-contractors it may use in the provision of services under this Agreement.

The Supplier shall not be entitled to any payment other than the Charges and, unless specified otherwise in any SOW, the Charges are inclusive of all out-of-pocket expenses which may be incurred by EY in connection with this Agreement, including travel and subsistence expenses, if any.

Payments will only be made in respect of invoices for which EY has issued a purchase order. A purchase order must be issued prior to receipt of Goods and/or Services. A purchase order is an official document stating that it is a purchase order or work order. It is the Supplier's responsibility to ensure that it has appropriate purchase orders for all Services provided in terms of this Agreement.

7. **Import Clearance.** The Supplier shall provide the following documents/details in case of imports:
- a) Bill of landing and appropriate invoice;
 - b) Product wise Country of Origin;
 - c) Product wise Net & Gross weight;

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- d) European Union stamp and any European Union requirement
- e) Such other approvals required as per applicable law depending on the product type.

Note: for goods shipped, CIF Incoterms will be applicable.

In case of Duty Paid shipments:

- Air Shipments: Both Customs duty payment and customs clearance will be under EY scope.
- Sea Shipments: Customs Duty Payment will be under EY scope whereas custom clearance and delivery to EY designated location shall be under Supplier's scope.

In case of Duty-Free shipments:

- Air Shipments: Custom duty & taxes will be NIL (zero) and customs clearance will be under EY scope.
- Sea Shipments: Custom duty & taxes will be NIL (zero) whereas custom clearance and delivery to EY designated location shall be under Supplier's scope

8. **Reporting.** Quality, status and other reasonably requested reports, including corrective action details, shall be submitted to EY promptly in writing upon request.
9. **Indemnification.** Supplier shall indemnify, defend, save, and hold EY, its affiliates and their partners, directors, employees, and agents (the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, costs and expenses (including reasonable legal fees) suffered by the Indemnified Parties as a result of any claim or demand by a third party in connection with or arising out of the performance, non-performance, breach or alleged breach of this Purchase Order by Supplier, its agents, employees, directors, affiliates or subcontractors, including any act of the shipper, defects in the Goods, Work Products and/or Services provided to EY, any misappropriation or infringement of any copyright, patent, trademark, trade secret or other proprietary right of EY or any third party and any wilful misconduct or negligence on the part of Supplier.
10. **Limitation of liability.** EY shall not be liable under or in connection with this Purchase Order, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any: (i) loss of profits, loss of revenue, business, goodwill or of anticipated savings (in each case whether direct or indirect); and/or (ii) any indirect, incidental, consequential, punitive or special damages, whether or not EY was advised, knew, or should have known of the likelihood of such damages. The total aggregate liability of EY arising out of or in connection with this Purchase Order, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, shall be limited in relation to events occurring in any calendar year to the charges for the Goods, Work Products and/or Services paid or payable by EY under this Purchase Order in such calendar year. Notwithstanding any other provision of this Purchase Order, Supplier's recourse with respect to any matter (including any obligation of EY hereunder) shall be limited solely to the assets of EY entity identified in the Purchase Order, and Supplier shall have no recourse against, and shall bring no claim against: (i) any other EY Network Member, nor (ii) individual partner, director, employee, or agent of EY or of any EY Network Member. Neither party shall be liable for any delay or failure to perform if such delay or failure arises from any act of God, civil disobedience, epidemic, war, insurrection or other circumstances beyond a party's reasonable control.
11. **Assignment and Sub-contracting.** Neither this Purchase Order nor any interest herein may be assigned, delegated, transferred or otherwise dealt with by Supplier without the prior written consent of EY. Notwithstanding the foregoing, EY may, from time to time, restructure, sell or transfer an EY Network Member, in whole or in part (a "Divestment" with the sold, transferred, or restructured EY Network Member, or part of an EY Network Member, becoming a "Divested Business"). Pursuant to a Divestment, EY may: (i) require Supplier to continue to provide Services to the Divested Business as though the Divestment has not occurred, provided EY shall remain liable for the Charges; or (ii) assign or novate the Agreement or any SOWs, in whole or in part, along with the associated benefits or rights to receive the Services and the corresponding obligations, in which event Supplier will enter into a separate contract with the Divested Business on terms comparable to and no less favourable than those set out in this Agreement. In the event of a partial assignment or novation as

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contemplated above, the Charges will be adjusted on a pro rata basis between EY and the Divested Business consistent with the pricing terms agreed under the Agreement and/or SOW.

As used in this Purchase Order, the term “**EY Network Member**” means any one of the network of entities comprising Ernst & Young Global Limited, EY Global Finance, Inc., EYGN Limited, EYGM Limited, EYGS LLP, EYGI B.V., EY Global Finance, Inc., and their members and any entity controlled by any such entity, under common control with any such entity, or controlling such entity, or any corporation, partnership or other business organisation that is a member firm or a subsidiary of the entity, or which is directly or indirectly a majority owned or controlled subsidiary of the entity, together with any partner, director, employee or agent of any such entity.

For the purposes of this Purchase Order, “**control**” means: (a) ownership, either directly or indirectly, of equity securities entitling either such entity to exercise in the aggregate of at least 50% of the voting power of such entity in question; or (b) possession, either directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity in question, whether through ownership of securities, by contract or otherwise.

Supplier shall not sub-contract provision of the Services without EY’s prior written consent and Supplier shall remain liable for performance of any such sub-contracted obligations and any acts or omissions of its sub-contractors.

12. **Compliance.** Supplier warrants that its performance of this Purchase Order and all actions in connection therewith shall comply with all applicable laws and regulations, including those relating to anti-bribery and corruption, including where applicable, regulations relating to imports and exports and data privacy, and Supplier shall not do, or omit to do, any act that will cause EY to be in breach of any such laws or regulations. The Supplier also warrants that it shall at all times act in compliance of EY Supplier Code of Conduct ([ey-supplier-code-of-conduct-2020.pdf](#)).
13. **Cancellation/Termination.** EY may terminate this Purchase Order in whole or in part, with or without cause, at any time and without liability, upon written notice to Supplier. In the event of any termination, Supplier shall promptly refund to EY any fees paid for Goods, Work Products and/or Services that have not been provided as at the effective date of termination, and no further fees shall be due from EY in respect of the Goods, Work Products and/or Services. Termination or expiry of this Purchase Order for any reason shall not affect the accrued rights and obligations of the parties at the date of termination or expiry (as applicable).
14. **Jurisdiction and Dispute Resolution.** This Purchase Order shall be governed by the common laws of Spain (“*derecho español común*”). In the event of any doubt, difference, dispute, controversy or claim arising from, out of or in connection with this Purchase Order, or on the interpretation thereof or on the rights, duties, obligation, or liabilities of any party hereto or on the operation, breach, termination or invalidity thereof (“**Dispute**”), such dispute shall be settled by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce (the “**ICC**”). The Arbitral Tribunal shall be composed of a sole arbitrator appointed by EY. The seat of arbitration shall be the city of Madrid and arbitration proceedings shall be conducted in English.

Provided however, a party to this Purchase Order requiring immediate relief from courts prior to the commencement of arbitration proceedings, to prevent or safeguard against all irreparable loss or harm, may apply to and obtain from court, injunctive relief by way of an enjoining order, injunctions, writs, or similar orders and the other party to this Purchase Order shall not object to such court exercising jurisdiction in respect of such matters.
15. **Binding Effect.** Upon performance by Supplier shall be deemed acceptance of all the terms and conditions set forth herein. Any alterations, modifications or additions made to this Purchase Order will be deemed of no effect unless expressly accepted in writing and signed by an authorized EY Representative.
16. **No Use of Name.** Supplier shall not use, or permit the use of, the name, trade name, service marks, trademarks, or logo of EY or of any EY Network Member in any form of publicity, press release, advertisement, or otherwise without EY’s prior written consent.

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17. **Additional Representations and Undertakings.** Supplier represents and warrants, on and as of the date of this Purchase Order, that:
- (1) entering into this type of agreement is in the ordinary course of the Supplier's business with customers such as EY;
 - (2) the Goods, Work Products and/or Services are being offered for purchase at market rates or otherwise in accordance with Supplier's internal pricing policies and practices;
 - (3) during the Term of this Purchase Order, the Supplier and none of the individuals with significant responsibility for providing services to EY shall be a partner, executive officer, member of the Board of Directors, or a direct or indirect substantial equity owner (or otherwise with control), of any audit client of an EY Network Member. For the purposes of this clause, a person or entity shall be deemed a "**substantial equity owner**" of an entity if he or it (i) is a general partner in such entity, if such entity is a limited partnership; (ii) holds a 5% or more direct or indirect equity interest in (or the power, by contract or other relationship, to direct the affairs or management of) such entity, if such entity is publicly-traded; (iii) holds a 20% or more direct or indirect equity interest in (or the power, by contract or other relationship, to direct the affairs or management of) such entity, if such entity is privately-held; and
 - (4) the aggregate amounts contemplated to be paid by EY to Supplier under this Purchase Order, and under all other agreements between EY and Supplier in effect within any fiscal year period, shall not exceed 7% of the Supplier's total revenues during such period.
18. **Insurance.** Supplier shall maintain in effect throughout the Term such insurance, issued by a nationally recognised insurance company of sound financial status, as is sufficient to cover all liabilities to which it may be subject in relation to this Purchase Order, including Contractors' All Risk (CAR) Policy, FLEXA cover and Workmen's Compensation (WC) policy. The CAR policy shall include third party liability and cover must be in place for the appropriate number of workers covering the entire Term, including any extension period, if any. EY must be included as co-insured. In addition, the WC policy needs to be in place for the appropriate number of workers covering the entire Term. The interest of EY as principal must be noted on all policies where required by the relevant legislation. Insurances are required prior to commencement of the work at any Location. A copy of the CAR policy & WC policy certificates evidencing the required coverage should be provided to EY by Supplier upon EY's request.
19. **Confidential Information.** The parties may, from time to time during the Term, provide to one another confidential information, including any information identified as confidential or proprietary, or which ought reasonably under the circumstances to be treated as confidential and/or proprietary, such as this Purchase Order, and information relating to a party's (which in the case of EY includes the EY Network Members') business, operations, products, customers, clients, services or methodologies (collectively, "**Confidential Information**"). Confidential Information shall not include information that: (1) is or becomes part of the public domain through no act or omission of the receiving party; (2) was in the receiving party's lawful possession prior to initial disclosure by the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party; or (5) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulated body, provided that (to the extent not prohibited from doing so under applicable law) prior written notice of such required disclosure is furnished to the disclosing party as soon as practicable in order to afford it an opportunity to seek a protective order. During the Term, and for a period of five (5) years following the expiration or termination for any reason of this Purchase Order, each party shall hold all Confidential Information relating to the other in confidence and shall treat such Confidential Information with the same degree of care that it uses to protect its own confidential information, which shall be no less than a reasonable degree of care. Supplier shall not, at any time during or after the Term, use any Confidential Information received from EY for any purpose other than carrying out its obligations under this Purchase Order. Upon EY's request, and upon the expiration or termination for any reason of this Purchase Order, Supplier shall promptly return to EY or, if so directed by EY, destroy all EY Confidential Information (in every form and medium), and certify such return or destruction in writing.

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Notwithstanding the foregoing, unless prohibited by law, Supplier understands and agrees that EY may disclose Supplier Confidential Information received from Supplier to other EY Network Member, and EY Network Member persons and third parties providing services on its behalf who may collect, use, transfer, store or otherwise process it in the various jurisdictions in which they operate for purposes related to the provision of the services, to comply with regulatory requirements, to check conflicts, for quality, risk management, or financial accounting purposes and/or for the provision of other administrative support services. EY shall be responsible to Supplier for maintaining the confidentiality of Supplier Confidential Information.

20. **Data Protection.** Each party shall comply with its obligations under any relevant data protection legislation and neither party shall do any act that puts the other party in breach of such legislation. In this section, “**data protection laws**” means all laws and regulations governing or related to the access to, transfer of, storage of or breach of data that can be used to identify and individual.

In compliance with the General Data Protection Regulation, the parties inform the individuals acting on behalf of other parties, or on their own behalf, or in whichever way is specified in the Purchase Order, that each party, acting independently as data controller, will process their personal data indicated in the Purchase Order.

The purpose of the processing is the exercising of the rights and the fulfillment of the obligations arising from this Purchase Order. Processing is strictly necessary for this purpose. The parties will not make automated decisions that could affect the data subjects. The data will be stored for the term of the Purchase Order and for the time required to comply with the applicable legal or contractual obligations related to the Purchase Order and to exercise and defend the parties' rights. The legal basis for processing is the performance of the contract and the legitimate interest in maintaining business and professional relationships between the parties. The data will be processed only by the parties and, if applicable, by: (i) other parties that the parties are legally obliged to notify; (ii) service providers that have been assigned any service connected to the management or performance of the Purchase Order; (iii) other companies of their corporate group, if required to fulfill the purpose of the processing. Data transfers outside the European Economic Area are not envisaged.

The data subjects can request access to and rectification or erasure of their personal data, request that processing be restricted, request data portability, or object to its processing, by writing to the corresponding party at the address specified in the header. They can also file a complaint with the corresponding data protection authority.

21. **Survival and Severance.** Clauses 2, 4, 9, 10, 14, 16, 17, 19, 20 and this Section 21 shall continue in full force and effect following the termination or expiry of this Purchase Order for any reason, together with any terms which by implication should survive. If any provision of this Purchase Order or any part thereof is determined to void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it will be void or unenforceable to that extent only and the validity and enforceability of any of the other provisions or the remainder of any such provision will not be affected.