

CONDITIONS OF PURCHASE

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the following words shall have the following meanings:

Applicable Law means all laws, statutes, regulations, edicts, by-laws, mandatory codes of conduct and mandatory guidelines, whether local, national, international or otherwise existing from time to time during the Term which apply to the provision of the Services or the performance of the Supplier's obligations under the Contract including but not limited to including all applicable laws relating to anti-discrimination and equal opportunity, health and safety, anti-bribery, anti-slavery and human trafficking, environmental protection and human rights.

Charges means the charges for the Services defined in the Order;

Confidential Information means all information (including all oral and visual information), and all information recorded in writing or electronically or in any other medium or by any other method) disclosed to or obtained by either party from the other, or a third party acting on behalf of the other, and shall include but not be limited to (i) the terms of the Contract and (ii) any information relating to the other party's operations, processes, plans, intentions, equipment, know how, designs, trade secrets, software, opportunities and business affairs;

Contract means the contract for the purchase and provision of the Services and Deliverables comprising the Order and these Conditions;

Conditions means these conditions of purchase;

Costa means the Costa Group company named in the Order;

Costa Competitor means any competitor of Costa or any member of the Costa Group, being a hotel and/or restaurant and/or coffee retailer business providing services that compete with Costa and/or the members of the Costa Group's core services;

Costa Group means Costa Limited (company number 1270695) and all its subsidiaries and any holding company or subsidiaries of such holding company from time to time each being a "**Costa Company**"; and

Costa Materials means all equipment, tools, materials, articles, documents, drawings, concepts, specifications and/or data of any nature supplied by Costa or any Costa Company to the Supplier

Deliverables means any deliverables and other materials provided by the Supplier to Costa in connection with the Services;

DPA means European Regulation (EU) 2016/679 and European Directive 2002/58/EC and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them, and all other applicable laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction, and "**Data Controller**" and "**Personal Data**" shall have the meaning given in the Data Protection Legislation;

Intellectual Property or IPRs means all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 images, rights in computer software, database rights, topography rights and moral rights, and all 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 right or form of protection in any part of the world;

Moral Rights means all rights described in Part 1, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;

Order means Costa's purchase order for the Services;

Services means any Services supplied under the Contract;

Supplier means the supplier named in the Order;

Supplier Background IPR means all Intellectual Property of the Supplier in existence as at the date of the Contract;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

1.2 In these Conditions, unless the context otherwise requires:

1.2.1 headings shall not affect the interpretation of these Conditions;

1.2.2 any reference to a statutory provision shall include references to that provision as from time to time modified or re-enacted;

1.2.3 the terms "subsidiary" and "holding company" shall have the meanings given in section 1162 Companies Act 2006;

1.2.4 any reference to a person includes any person, firm or company or other legal entity;

1.2.5 the singular includes the plural and vice versa; and

1.2.6 "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 All consents, approvals, notices, directions and/or instructions which are required to be given or obtained pursuant to this Contract shall be given in writing unless otherwise stated.

1.4 The parties intend that this Contract may be enforced by each member of the Costa Group pursuant to section 1(1)(a) of the Contracts (Rights of Third Parties) Act 1999. The parties reserve the right to rescind or vary this Contract without the consent of the other members of the Costa Companies.

2 APPLICATION OF TERMS

2.1 These Conditions are the only conditions which govern the Contract and the purchase and supply of the Services and Deliverables and all other terms or conditions are excluded. The Supplier waives any right which it otherwise might have to rely on any other terms and conditions.

3 COMMENCEMENT AND DURATION

The Contract shall come into force on the date set out in the Order and shall continue until the date the relevant Services or Deliverables have been performed or delivered (the "**Term**") unless terminated earlier in accordance with Condition [].

4 SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall provide the Services and provide the Deliverables in accordance with the terms of the Contract.

4.2 The Supplier shall:

4.2.1 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's profession;

4.2.2 deploy sufficient personnel, to ensure that the Supplier's obligations are fulfilled in accordance with the provisions of the Contract and ensure that all personnel deployed by it to perform the Services are suitably skilled and experienced to perform the tasks assigned to them;

4.2.3 not change any key personnel without the prior written consent of Costa and use all reasonable endeavours to maintain continuity in the other personnel performing the Services;

4.2.4 co-operate fully with Costa in all matters relating to the Services, and comply with all reasonable instructions of Costa;

4.2.5 ensure that the Services and the Deliverables conform with the descriptions and specifications set out in an Order, and that, without prejudice to the foregoing, the Deliverables shall be of satisfactory quality and fit for their usual purpose and for any purpose expressly or impliedly made known to the Supplier by Costa;

4.2.6 provide all equipment, content, tools, materials and other items required to provide the Services in addition to the Deliverables;

4.2.7 comply with all Applicable Laws;

4.2.8 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of Costa's premises at which any of the Services are performed; and

4.2.9 only use Costa Materials in connection with the performance of the Services with the prior consent of Costa and hold all Costa Materials that it is permitted to use in safe custody at its own risk, maintain them in good condition until returned to Costa, and not dispose of or use the Costa Materials other than in accordance with Costa's written instructions; and

4.2.10 save for any Supplier Background IPR, ensure that the Deliverables and all related IPRs will be original and will not contain anything obscene or blasphemous and that the Deliverables will not infringe the IPRs of any third party;

4.3 The Supplier acknowledges that time is of the essence in providing any part of the Services which have a fixed deadline. Where no fixed deadlines are specified in the Contract the Supplier agrees that it shall perform the Services within a reasonable time. The Supplier shall keep Costa regularly informed of the progress of the Services and shall immediately inform Costa if it believes that it will be unable to comply with any of the timetables agreed for the performance of the Services.

4.4 Costa shall have the right to require the Supplier to replace, upon reasonable notice, any person which the Supplier appoints to supply the Services to Costa if Costa reasonably believes that any such person does not possess the qualification and skills required to provide the Services or is otherwise unsuitable to provide the Services.

4.5 Without prejudice to Condition 4.4, in the event the Supplier replaces any person who it appoints to supply the Services the Supplier shall ensure, at its own cost, there is an orderly and efficient handover of tasks and information to the new personnel.

- 4.6 The Supplier shall not provide any Services that are the same as or substantially similar to the Services to a Costa Competitor.
- 4.7 The Supplier acknowledges it is appointed to provide the Services on a non-exclusive basis and nothing shall prevent Costa from procuring services or deliverables of the same or a similar nature to the Services or Deliverables from other third parties.
- 5 COSTA'S OBLIGATIONS**
- 5.1 Costa shall:
- 5.1.1 provide reasonable co-operation to the Supplier in relation to the Services;
- 5.1.2 provide such access to Costa's premises and data, and such office accommodation and other facilities as Costa considers reasonably necessary for the provision of the Services; and
- 5.1.3 provide such information as the Supplier may reasonably request and Costa considers reasonably necessary, in order to carry out the Services in a timely manner.
- 6 CHARGES AND COSTS**
- 6.1 The Charges for the Services are set out in an Order. The Charges are exclusive of VAT (where applicable) but inclusive of all other charges. Costa shall pay VAT at the prevailing rate. No increase in the Charges may be made for any reason without the prior written consent of Costa.
- 6.2 The Supplier shall be responsible for all costs that it incurs in connection with the performance of the Services.
- 7 PAYMENT**
- 7.1 The Supplier shall invoice Costa for the Charges after delivery of the Services or Deliverables. Each invoice shall quote the number of the Order and shall be a valid VAT invoice.
- 7.2 The Supplier shall comply with Costa's reasonable invoicing procedures as notified to the Supplier by Costa (and as amended and notified from time to time). Costa reserves the right to reject invoices and applications for payment which do not comply with these procedures.
- 7.3 Costa shall pay the Charges within 60 days of receipt of a properly issued, valid and undisputed invoice, but time for payment shall not be of the essence of the Contract. Costa shall make all payments in sterling unless it agrees otherwise in writing.
- 7.4 In the event of late payment, the Supplier shall be entitled to charge interest on the outstanding amount at the rate of 2% per annum above the Bank of England base rate from time to time in force from the date payment falls due to the date of actual payment. In relation to payments disputed in good faith, interest shall be payable only after the dispute is resolved, on sums found or agreed to be due, from the date 14 days after the dispute is resolved until payment.
- 8 INTELLECTUAL PROPERTY**
- 8.1 The Supplier acknowledges that all right, title and interest in IPR owned or used by the Costa Group shall remain vested in or licensed to the relevant Costa Group and that the Supplier shall not have any right, title or interest to or in the same other than the right to use the Costa Materials during the Term as reasonably required for the provision of the Services.
- 8.2 Subject to Condition 8.3, the Supplier assigns to Costa, with full title guarantee and free from all third party rights, all Intellectual Property in the Deliverables for the full duration of such Intellectual Property together with the right to sue for damages for past infringement of, or other unlawful uses of, such IPR.
- 8.3 The Supplier shall retain all right, interest and title in the Supplier Background IPR. The Supplier grants each member of the Costa Group an irrevocable perpetual worldwide royalty free licence to use any Supplier Background IPR in the Deliverables to the extent required to use the Deliverables.
- 8.4 The Supplier unconditionally and irrevocably waives, in respect of the Deliverables all Moral Rights to which it may now or at any future time be entitled. This waiver is made in favour of the Costa Group and their licensees, sub-licensees, assignees and successors in title to the IPRs in the Deliverables.
- 9 PROVISION OF INFORMATION, AUDIT AND ACCESS**
- 9.1 The Supplier shall keep and maintain books, records, documents and electronic information in connection with the performance of the Contract for three years following the Term and shall provide access at all reasonable times and on reasonable notice to duly authorised staff and agents of Costa to inspect and take copies of such books, records, documents and electronic information.
- 10 INDEMNITY**
- 10.1 The Supplier shall keep Costa and each member of the Costa Group indemnified against all direct loss (including, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Costa as a result of or in connection with:
- 10.1.1 an infringement or alleged infringement of any Intellectual Property Rights of another person caused by the provision of the Services or the possession or use of any of the Deliverables (except to the extent that any such infringement arises from compliance with a specification supplied by Costa); and
- 10.1.2 failure by the Supplier to comply with Condition 15.
- 10.2 The indemnities in Condition 10.1 are without prejudice and in addition to any warranties, indemnities, remedies or other rights provided by law and/or statute and/or under any other provision of the Contract for the benefit of Costa.
- 11 INSURANCE**
- The Supplier shall take out and maintain in force adequate and appropriate insurance with an insurer of good repute to cover the Supplier for all liabilities which may arise under the Contract. The Supplier shall provide to Costa evidence (satisfactory to Costa) of such insurance and of payment of premiums, whenever it requests.
- 12 CANCELLATION**
- Costa may cancel the Order at any time and for any reason by giving the Supplier written notice. The Supplier shall stop all work on the Order from the date required by Costa and Costa's liability shall be limited to paying the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation excluding loss of anticipated profits or any consequential loss.
- 13 TERMINATION**
- Either party may terminate this Contract immediately by notice in writing to the other party, if: the other party commits a material breach of the terms of the Contract and has not remedied the same (if such breach is capable of remedy) within 30 days of being given notice in writing specifying the breach and requiring its remedy; or the other party becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets; if any petition shall be presented, order shall be made or resolution passed for its winding up (except for the purposes of a bona fide amalgamation or reconstruction), bankruptcy or dissolution; if it shall otherwise propose or enter into any composition or arrangement with its creditors or any class of them, if it ceases to carry on business or if it claims the benefit of any statutory moratorium; or anything analogous to the foregoing occurs in any applicable jurisdiction.
- 14 CONSEQUENCES OF TERMINATION**
- 14.1 Termination of this Contract for any reason shall be without prejudice to any rights or obligations that have accrued to either party as at the date of such termination and shall be without prejudice to those provisions the survival of which is necessary for the interpretation or enforcement of the Contract which shall continue to have effect following termination.
- 14.2 Upon expiry or termination of this Contract the Supplier shall immediately return all Costa Materials to Costa.
- 15 TUPE**
- 15.1 The Supplier acknowledges that Costa will have no liability pursuant to TUPE upon expiry or termination (howsoever caused) of all or part of this Contract and the Supplier will fully indemnify Costa for itself and as trustee for any third party replacing the Supplier in respect of the Services (the "Third Party Supplier") with respect to any and all losses, costs, actions, proceedings, demands or claims ("Losses") arising in connection with the employment and the termination of employment of any personnel of the Supplier or sub-supplier of the Supplier where those Losses transfer or are alleged to transfer to Costa or any Third Party Supplier pursuant to TUPE.
- 15.2 If any contract of employment (including any rights, powers, duties and liabilities under or in connection with any such contract) of any personnel of the Supplier or sub-supplier of the Supplier is found or alleged to have effect pursuant to TUPE after the expiry or termination (howsoever caused) of all or part of the Contract as if it was a contract of employment originally made with Costa or any Third Party Supplier, Costa or any Third Party Supplier may terminate the employment of the person concerned and the Supplier will fully indemnify Costa for itself and as trustee for any Third Party Supplier against any Losses suffered or incurred by Costa or any Third Party Supplier as a direct or indirect result of the employment of such person and the termination of such employment including any redundancy costs.
- 16 ANTI-BRIBERY**
- 16.1 The Supplier warrants and covenants that it and its personnel shall comply with any applicable laws in force from time to time regarding

- bribery, fraudulent acts and/or any other corrupt practice including: the Bribery Act 2010; the Anti-Terrorism, Crime and Security Act 2001; and the US Foreign Corrupt Practices Act of 1977, (the “**Anti-Bribery Law**”).
- 16.2 Without limiting Condition 16.1, the Supplier warrants that it and its personnel will:
- 16.2.1 adhere to and comply with any policies or protocols notified to it by Costa from time to time regarding bribery, fraudulent acts and/or any other corrupt practices; and
- 16.2.2 provide any information reasonably requested by Costa from time to time in relation to ensuring compliance by Costa with any law or Anti-Bribery Law;
- 16.3 Without limiting Condition 16.1, the Supplier represents, warrants and undertakes that it and its personnel will not offer promise or agree to give any financial or other advantage (including, but not limited to, any money or gift of any value), to:
- 16.3.1 any official or employee of any government, governmental or regulatory agency or other public body (or any person acting in an official capacity for or on behalf of any government, governmental or regulatory agency or other public body) in return for such person assisting (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business for Costa; or
- 16.3.2 any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for Costa. In this context “improper performance” means performance which does not comply with any reasonable expectations of impartiality or good faith or otherwise, that are expected of the Supplier or its personnel.
- 16.4 If the Supplier, its personnel or anyone acting on the Supplier's behalf breaches Conditions 16.1 to 16.3, Costa may terminate this Contract by written notice with immediate effect.
- 17 CONFIDENTIALITY**
- 17.1 Each party will take all proper steps to keep confidential all Confidential Information of the other which is disclosed to or obtained by it pursuant to or as a result of this Contract, will not use the Confidential Information for any purpose other than the performance of its obligations under this Contract, will not divulge the same to any third party and will allow access to the same to its own staff only on a “need to know” basis.
- 17.2 Each party may use or disclose Confidential Information of the other party to the minimum extent necessary, to any governmental or other authority or regulatory body or as required by law. The provisions of Condition 17.1 shall not apply to the extent that the Confidential Information has become public knowledge through no fault of the party receiving it, or was already known by that party at the time it was disclosed to it by the other party. Upon termination of this Contract, each party will return to the other any written data (without retaining copies thereof) provided for the purposes of this Contract. Notwithstanding the termination or expiry of this Contract for whatever reason the obligations and restrictions in this Condition 17 shall remain valid.
- 18 PUBLICITY**
- 18.1 The Supplier shall not during or after the end of this Contract;
- 18.1.1 issue any publicity material concerning this Contract, the Services or any of the Costa Companies or their businesses;
- 18.1.2 refer to this Contract, the Services or any Costa Company or its business in any publicity or advertisement or other promotional activity;
- 18.1.3 use any Intellectual Property of any Costa Company;
- 18.1.4 utilise any promotional goods, merchandising goods, drawings, plans, photographs, reports, documents or any other items produced for Costa (or otherwise produced under the terms of this Contract) in pursuance of its own commercial objectives by way of marketing, advertising or referencing to customers other than Costa
- in each case without prior consultation with and the express written approval of Costa
- 19 DATA PROTECTION**
- 19.1 It is not anticipated that any Personal Data will be shared in connection with this Agreement. To the extent that any Personal Data is shared by one Party with the other Party in connection with this Agreement or that Data Protection Legislation otherwise applies in connection with this Agreement, the Parties agree that each Party: acts as an independent Data Controller; and shall comply with the Data Protection Legislation in respect of such Personal Data applicable to it in connection with this Agreement.
- 20 GENERAL**
- 20.1 The Supplier may not assign, transfer, charge or otherwise encumber, create any trust over or deal in any manner with the Contract or any right, benefit or interest under it nor transfer, novate (or sub contract any of its obligations under it) without the prior written consent of Costa. Costa reserves the right to withdraw any such consent at any time.
- 20.2 Nothing in the Contract shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 20.3 The Contract contains the entire agreement between the parties with respect to the subject matter of the Contract, and supersedes all previous agreements and understandings between the parties with respect to the Contract.
- 20.4 Each party acknowledges that, in entering into the Contract it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in the Contract.
- 20.5 No variation of the Contract shall be valid unless made in writing and signed by a duly authorised representative of each party.
- 20.6 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.
- 20.7 All notices under the Contract shall be:
- 20.7.1 in writing and addressed to the recipient at the address set out in the Order;
- 20.7.2 deemed to have been duly given when delivered, if delivered by messenger during normal business hours of the recipient; or on the second business day following mailing, if sent by first class pre paid recorded delivery post; or at the time of transmission if sent by fax (provided that a copy of the fax is put in the post to the recipient by first class recorded delivery post within 24 hours of the transmission).
- 20.8 Each party shall from time to time upon the request (and at the expense) of the other party execute any additional documents and do any other acts or things which may reasonably be required to effect the purposes of this Contract
- 20.9 English law governs the Contract and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.
- 20.10 This Contract may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.