

IR35/Off Payroll Worker Order

In furtherance of the Board's (defined below) statutory functions the Board may itself, or through V&A Enterprises (defined below), from time to time procure services from the Supplier (defined below) on these Terms & Conditions.

1. Definitions

"Board" means the Board of Trustees of the Victoria and Albert Museum, a body corporate established under the National Heritage Act 1983.

"Confidential Information" means all scientific or commercial know-how, marketing opportunities, projects, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the V&A or its agents and any other confidential information concerning the V&A's business which the Supplier may obtain.

"Data Protection Legislation" means the General Data Protection Regulations, the Data Protection Act 2018 and related legislation concerning the use and processing of personal data.

"Deliverables" means any goods or deliverables provided by the Supplier to the V&A that result from the Services (including any papers and presentations).

"EIR" means the Environmental Information Regulations 2004.

"Fee" means the fee payable by the V&A to the Supplier for the supply of the Services as identified in an IR35/Off Payroll Worker Order.

"FOIA" means the Freedom of Information Act 2000.

"Intellectual Property Rights" or **"IPRs"** means all present and future rights conferred by statute, common law or equity in any territory in or in relation to copyright, trade marks, designs, patents, database, business and domain names and inventions and all rights of a similar nature whether or not registrable, registered or otherwise protectable and all applications therefor for the full period of such rights, including any renewals, revivals and extensions, and all related rights and causes of action which may accrue in respect of the said rights and related rights at any time.

"Invoice Date(s)" means the date or dates identified in an IR35/Off Payroll Worker Order on which the Fee, or instalments of it, are to be invoiced by the Supplier.

"IR35/Off Payroll Worker Order" means a contract between the V&A and the Supplier for the supply of the Services in the form supplied to a potential Supplier by the V&A which incorporates these Terms and Conditions by reference.

"NICs" means National Insurance Contributions.

"Purchase Order Number" means a purchase order number issued to the Supplier by the V&A in an email that refers to the IR35/Off Payroll Worker Order.

"Request for Information" means any request for Information (as defined within the FOIA or other relevant rules or regulations) under the FOIA or the EIR or other relevant rules or regulations.

"Services" means the services to be provided by the Supplier as identified in an IR35/Off Payroll Worker Order.

"Supplier" means the supplier identified in an IR35/Off Payroll Worker Order.

"Third Party Material" means any material in whatever format provided to the V&A as part of the Services where the IPRs are not owned by the Supplier.

"V&A" means whichever of the Board or V&A Enterprises is described on the IR35/Off Payroll Worker Order in question as the contracting party (VAT Registration number GB 444 0850 63).

"V&A Enterprises" means the Board's wholly owned trading company called V&A Enterprises Ltd (company number 01955898).

"V&A Materials" means all materials, equipment and tools, drawings, specifications, and data supplied by the V&A to the Supplier.

2. Basis of Contract

- 2.1. Subject to Clause 2.2 below when a potential Supplier signs an IR35/Off Payroll Worker Order it shall be deemed to constitute an offer by the Supplier to provide the Services to the V&A on the terms of the IR35/Off Payroll Worker Order. The Supplier's offer shall be deemed to be accepted by the V&A when the V&A issues the Supplier with a Purchase Order Number at which point a contract for the supply of the Services on these Terms & Conditions shall come into existence.
- 2.2. If the V&A and the Supplier have entered into a separate contractually binding agreement for the provision of Services prior to the date on which a Purchase Order Number is issued the terms of that agreement will prevail over any conflicting term set out in this IR35/Off Payroll Worker Order.
- 2.3. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that are inconsistent with this IR35/Off Payroll Worker Order.

3. The Services

- 3.1. The Supplier shall ensure that the Services shall:

- (a) correspond with their description in the IR35/Off Payroll Worker Order and any applicable specification specified by the V&A from time to time
- (b) be provided with all due care, skill, efficiency, economy and diligence and in accordance with good industry practice;
- (c) be provided truthfully, accurately, loyally and in good faith towards the V&A ensuring fitness for any purpose expressly or impliedly made known to the Supplier by the V&A;
- (d) in compliance with the requirements of all applicable legislation, rules and regulations and such that any necessary licences and consents required to enable the Supplier to provide the Services are in place before the performance of the Services commences;
- (e) using suitably skilled and experienced personnel, in sufficient number to ensure that the Supplier's obligations are fulfilled; and

- (f) without doing any act or thing which would or might be expected to damage the reputation of the V&A.
- 3.2. If the Services do not comply with the undertakings set out at Clause 3.1 above, or the V&A considers that the Services do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1 above, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Services or any Deliverables, the V&A may exercise any one or more of the following remedies:
- (a) to terminate this IR35/Off Payroll Worker Order;
 - (b) to reject the Services and any Deliverables (in whole or in part) and return any Deliverables to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to remedy the rejected Services, or to provide a full refund of the price of the rejected Services and/or Deliverables (if already paid);
 - (d) to refuse to accept any subsequent supply of Services which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by the V&A in obtaining substitute services from a third party; and
 - (f) to claim damages for any other costs, loss or expenses incurred by the V&A which are in any way attributable to the Supplier's failure to carry out its obligations under this IR35/Off Payroll Worker Order.
- 3.3. The V&A's rights and remedies under Clause 3.2 are in addition to its rights and remedies implied by statute and common law.

4. The Deliverables

- 4.1. Where the Services involve the supply of any Deliverables the Supplier shall ensure that the Deliverables shall:
- (a) correspond with their description and any applicable specification agreed with the V&A;
 - (b) be of satisfactory quality (within the meaning of the Sale of Deliverables Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the V&A expressly or by implication, and in this respect the V&A relies on the Supplier's skill and judgement;
 - (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery;
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Deliverables;
 - (e) be properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - (f) on delivery be accompanied by a delivery note which shows the Purchase Order Number, the type and quantity of the Deliverables, special storage instructions (if any) and, if the Deliverables are being delivered by instalments, the outstanding balance of Deliverables remaining to be delivered.
- 4.2. If the Supplier requires the V&A to return any packaging material to the Supplier this must be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.3. Delivery of the Deliverables shall be completed on the completion of unloading the Deliverables at the notified to the Supplier by the V&A and title and risk in the Deliverables shall pass to the V&A on completion of delivery.

5. Fees and Payment

- 5.1. The fee of the Services shall be the Fee set out in the IR35/Off Payroll Worker Order, or, if no fee is quoted, the price set out in the Supplier's published price list in force as at the date this IR35/Off Payroll Worker Order came into existence.
- 5.2. The Fee:
- (a) excludes amounts in respect of value added tax (VAT), which the V&A shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs of supplying, packing, insuring and carriage of any Deliverables.
- 5.3. No extra charges shall be effective unless agreed in writing with the V&A.
- 5.4. The Supplier may invoice the V&A for Fee plus VAT at the prevailing rate (if applicable) on the Invoice Date(s) provided that all Services that the Supplier is required to supply by that date have been provided in accordance with this Contract for Service. The Supplier shall ensure that all invoices include a reference to the IR35/Off Payroll Worker Order, the Purchase Order Number, the Supplier's VAT registration number and any supporting documents that the V&A may reasonably require.
- 5.5. The V&A shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 5.6. If a party fails to make any payment due to the other under this IR35/Off Payroll Worker Order by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 5.7. The V&A may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the V&A against any liability of the V&A to the Supplier.

6. Payment of Income Tax and National Insurance

- 6.1. The Supplier or its staff shall at no time become an employee of the Board or V&A Enterprises and accordingly shall be responsible for making his/her own arrangements for the payment of Income Tax, National Insurance and any other contributions and shall indemnify the Board and V&A Enterprises in respect of any liability for Income Tax, National Insurance and any other contributions.

- 6.2. Where the Supplier is liable to be taxed in the UK in respect of consideration received under this IR35/Off Payroll Worker Order, they shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 6.3. Where the Supplier is liable to NICs in respect of consideration received under this IR35/Off Payroll Worker Order, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 6.4. The V&A may, at any time during the term of this IR35/Off Payroll Worker Order, request the Supplier to provide information which demonstrates how the Supplier complies with Clauses 6.2 and 6.3 above or why those Clauses do not apply to them.
- 6.5. A request under Clause 6.4 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 6.6. The V&A may terminate this IR35/Off Payroll Worker Order if:
 - (a) in the case of a request referred to Clause 6.4 above -
 - i. the Supplier fails to provide information in response to the request within a reasonable time or the time frame specified; or
 - ii. the Supplier provides information which is inadequate to demonstrate either how the Supplier complies with Clauses 6.2 and 6.3 above or why those Clauses do not apply to them; or
 - (b) it receives information which demonstrates that, at any time when Clauses 6.2 and 6.3 apply to the Supplier, the Supplier is not complying with those Clauses.

7. Intellectual Property Rights

- 7.1. The Supplier hereby
 - (a) subject to sub-clause (e) below assigns to the V&A absolutely with full title guarantee the IPRs in the Deliverables, any specifications, instructions, plans, drawings, patterns, models, designs or other materials furnished to or made available to the V&A in the course of providing the Services;
 - (b) subject to sub-clause (e) below confirms that the Deliverables are original to the Supplier and do not infringe the rights of any third party (or any laws or regulations), are not defamatory or in any way illegal or contain otherwise actionable material;
 - (c) subject to sub-clause (e) below confirms that the Supplier owns all the rights in the Deliverables and has not granted any rights to any third parties;
 - (d) subject to sub-clause (e) below warrants that the Supplier is freely entitled to assign the IPRs in the Deliverables to the V&A in accordance with the terms of this IR35/Off Payroll Worker Order;
 - (e) warrants that the Supplier has all the applicable permissions and licenses and has fulfilled any other relevant requirements necessary to copy and provide to the V&A any Third Party Material and that any Third Party Material shall be appropriately flagged as such to the V&A where not immediately identifiable; and
 - (f) undertakes at the request and expense of the V&A to do all acts and execute all documents which may be necessary to confirm the title of the V&A to the IPRs in the Deliverables.
- 7.2. The Supplier acknowledges that all V&A Materials and all IPRs in the V&A Material are and shall remain the exclusive property of the Board and/or V&A Enterprises. The Supplier shall keep the V&A Materials in safe custody at its own risk, maintain them in good condition until returned to the V&A and not dispose or use the same other than in accordance with the V&A's written instructions or authorisation.

8. Health, Safety and Security

- 8.1. The Supplier represents and warrants to the V&A that the Supplier has satisfied him/herself that all necessary tests and examinations have been made or will be made before the supply of the Services commences to ensure that the Services are designed, provided and constructed so as to be safe and without risk to the health or safety of persons using the same, and that it has made available to the V&A adequate information about the use for which the Services and Deliverables have been designed and have been tested.
- 8.2. The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, to the extent that it applies to the Supplier's performance of the IR35/Off Payroll Worker Order.
- 8.3. Whilst on V&A premises the Supplier shall comply with Health, Safety and Security regulations of the V&A including the V&A's Conditions Governing Work and any other such regulations as the V&A shall notify to the Supplier from time to time in writing.

9. Indemnity

- 9.1. The Supplier shall keep the Board and V&A Enterprises indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Board and V&A Enterprises as a result of or in connection with:
 - (a) any claim made against the Board or V&A Enterprises for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply of the Services or use of the Deliverables, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (b) any claim made against the Board or V&A Enterprises by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Services or Deliverables, to the extent that the defects in the Services/Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

- (c) any claim made against the Board or V&A Enterprises by a third party arising out of or in connection with the supply of the Services and Deliverables, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this IR35/Off Payroll Worker Order by the Supplier, its employees, agents or subcontractors.

9.2. This Clause 9 shall survive termination of this IR35/Off Payroll Worker Order.

10. Insurance

During the term of this IR35/Off Payroll Worker Order and for a period of three years thereafter, the Supplier 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 this IR35/Off Payroll Worker Order, and shall, on the V&A'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.

11. Termination

- 11.1. The V&A may terminate this IR35/Off Payroll Worker Order in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on this IR35/Off Payroll Worker Order. The V&A shall pay the Supplier fair and reasonable compensation for any work in progress on the Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2. Without limiting its other rights or remedies, the V&A may terminate this IR35/Off Payroll Worker Order with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of any term of this IR35/Off Payroll Worker Order and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
 - (b) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his or her creditors, having a trustee, receiver, administrative receiver or manager or other similar officer appointed to any of his or her 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;
 - (c) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Supplier's financial position deteriorates to such an extent that in the V&A's opinion the Supplier's capability to adequately fulfil its obligations under this IR35/Off Payroll Worker Order has been placed in jeopardy.
- 11.3. Termination of this IR35/Off Payroll Worker Order, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 11.4. Clauses that expressly or by implication survive termination of this IR35/Off Payroll Worker Order shall continue in full force and effect.

12. Force Majeure

Neither party shall be in breach of this IR35/Off Payroll Worker Order nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control which were not reasonably foreseeable when the V&A issued the Supplier with the relevant Purchase Order Number. If the period of delay or non-performance continues for 2 months, the party not affected may terminate this IR35/Off Payroll Worker Order by giving 28 days written notice to the affected party.

13. The Board and V&A Enterprises

The Supplier acknowledges that the Board sometimes retains staff and provides services through its trading company, V&A Enterprises and vice versa. The obligations of the V&A under this Agreement may therefore be satisfied through either the Board or V&A Enterprises and the Supplier accepts that both the Board and V&A Enterprises shall have the same rights against Supplier under this Agreement. Notwithstanding any subcontracting of the obligations of the Board to V&A Enterprises (or vice versa) whichever of the Board and V&A Enterprises is the V&A for the purposes of each IR35/Off Payroll Worker Order shall remain liable to the Supplier for all acts or omissions of the other as if they were their own acts or omissions.

14. Freedom of Information

- 14.1. The Supplier acknowledges that the Board and V&A Enterprises are subject to the requirements of the FOIA, the EIR and other disclosure requirements of a similar nature and shall assist and cooperate with the Board and V&A Enterprises to enable them to comply with their information disclosure obligations under the same.
- 14.2. The Supplier shall and shall ensure that its employees, agents, sub-contractors and any other representatives shall:
- (a) transfer any Request for Information to the V&A as soon as practicable after receipt and in any event within two business days of receiving a Request for Information;
 - (b) provide the V&A with a copy of all Information in its possession or power in the form that the V&A requires within five business days (or such other period as the V&A may specify) of the V&A requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the V&A to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR FOIA or otherwise in the relevant rules or regulations.
- 14.3. The Board and V&A Enterprises shall be responsible for determining whether any Information:
- (a) is exempt from disclosure in accordance with the provisions of FOIA, EIR or the other relevant rules or regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.

- 14.4. The Supplier acknowledges that the Board and/or V&A Enterprises (as appropriate) may be obliged under the FOIA, EIR or other relevant rules or regulations to disclose Information, in some cases even where that Information is commercially sensitive provided that the Board and/or V&A Enterprises (as appropriate) take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
15. Confidentiality
- 15.1. Subject to Clause 15.2 below the Supplier shall keep in strict confidence all Confidential Information and the Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the V&A and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- 15.2. The Supplier may disclose Confidential Information to the minimum extent required by:
- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
 - (b) the rules of any listing authority or stock exchange on which its shares are listed or traded; or
 - (c) the laws or regulations of any country to which its affairs are subject
- 15.3. provided that before the Supplier discloses any Confidential Information pursuant to this Clause 15.2 it shall, to the extent permitted by law, use all reasonable endeavours to give the V&A as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this Clause 15.2, the Supplier shall take into account the reasonable requests of the V&A in relation to the content of this disclosure.
16. Data Protection
- 16.1. The Supplier accepts that his or her personal data (as that term is defined in the Data Protection Legislation) shall be used by the Board and V&A Enterprises in accordance with the Data Protection Legislation for the purposes of performing the V&A's obligations under the IR35/Off Payroll Worker Order and otherwise for the purposes of the legitimate interests pursued by the Board, V&A Enterprises and third parties.
- 16.2. The Supplier shall (and shall ensure that all of its personnel and sub-contractors shall) comply with the requirements of the Data Protection Legislation arising in respect of data processed in relation to supplying the Services or otherwise in connection with the IR35/Off Payroll Worker Order.
17. Assignment and sub-contracting
- The Supplier may not assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under or pursuant to this IR35/Off Payroll Worker Order, or sub-contract the performance of any of its obligations under or pursuant to this IR35/Off Payroll Worker Order without the prior written consent of the V&A. The Supplier will not be relieved of any of its obligations and/or duties under this IR35/Off Payroll Worker Order by virtue of the V&A agreeing in writing to the sub-contracting of any or all of its obligations and/or duties under this IR35/Off Payroll Worker Order.
18. Third party rights
- The parties agree that no term of this IR35/Off Payroll Worker Order will be enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999 provided that regardless of which of the Board and V&A Enterprises is the V&A for the purposes of each IR35/Off Payroll Worker Order, either the Board or V&A Enterprises shall be entitled to enforce against the Supplier any provision of the IR35/Off Payroll Worker Order that purports to confer any benefit upon it.
19. Severability
- If any provision (or part of a provision) of this IR35/Off Payroll Worker Order or the Terms and Conditions is held to be invalid or unenforceable, then such provision (or relevant part, as the case may be) shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in this IR35/Off Payroll Worker Order but without invalidating any of the remaining provisions (or remaining part of any provision) of this IR35/Off Payroll Worker Order.
20. Waivers
- No failure or delay by any party in exercising any right or remedy provided by law under or pursuant to this IR35/Off Payroll Worker Order shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time.
21. Variation
- No amendment or variation of this IR35/Off Payroll Worker Order shall be valid unless it is in writing and signed by or on behalf of duly authorised representatives of each of the parties.
22. Entire Agreement
- This IR35/Off Payroll Worker Order sets out the entire agreement and understanding between the parties in respect of the matters covered herein and supersedes any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.
23. Governing Law and Jurisdiction

- 23.1. This IR35/Off Payroll Worker Order 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 law of England and Wales.
- 23.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this IR35/Off Payroll Worker Order or its subject matter or formation (including non-contractual disputes or claims).