

## TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS

### 1 INTERPRETATION

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

#### 1.1 Definitions:

“**ADR notice**” has the meaning given in clause 27.1.

“**Affected party**” has the meaning given in clause 26.2.

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

“**Claim**” has the meaning given in clause 20.2.

“**Conditions**” these terms and conditions as amended from time to time in accordance with clause 28.5.

“**Confidential Information**” any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party’s operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

“**Contract**” the contract between the Manufacturer and the Customer for the sale and purchase of the Products in accordance with these Conditions.

“**Customer**” the person or firm who purchases the Products from the Manufacturer.

“**Customer IPRs**” the Trade Marks and all Intellectual Property Rights of which the Customer is the owner or licensee, including but not limited to in the Technology and the Materials, and which are disclosed, licensed or provided to the Manufacturer pursuant to the Contract.

“**Delivery**” completion of delivery of an Order in accordance with clause 8.2 or clause 8.7.1.

“**Delivery Date**” the estimated date for delivery of an Order in accordance with clause 2.5.

“**Delivery Location**” the location set out in the Order or such other location as the parties may agree.

“**Dispute**” has the meaning given in clause 27.1.

“**Dispute Notice**” has the meaning given in clause 27.1.

“**Force Majeure Event**” has the meaning given in clause 26.1.

“**Group**” in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“**holding company**” has the meaning given in clause 1.5.

**“Improvement”** any improvement, development, enhancement, modification or derivative of the Product, or its design or manufacturing process, which would make the Product cheaper, more effective, more useful or more valuable, or would in any other way render the Product more commercially competitive.

**“Intellectual Property Rights or IPRs”** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Manufacturer”** Cotswold Perfumery Limited (registered in England and Wales with Company Number 00869623).

**“Materials”** all forms, manuals, records, artwork and other documents and materials provided by the Customer to the Manufacturer in connection with the Contract.

**“month”** a calendar month.

**“Order”** an order for Products submitted by the Customer in accordance with clause 2.

**“Order Number”** the reference number to be applied to an Order by the Manufacturer in accordance with clause 2.3.

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

**“Product Prices”** the prices of the Products as determined in accordance with clause 13.1 and Product Price means the price of an individual Product as determined in accordance with that clause.

**“Representatives”** has the meaning given in clause 23.2.

**“Specification”** any specification for the Products that is agreed in writing by the Customer and the Manufacturer.

**“subsidiary”** has the meaning given in clause 1.5.

**“Technology”** all methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, know-how and other information.

**“Trade marks”** the registered trade marks of the Customer.

**“VAT”** value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Clause and paragraph headings shall not affect the interpretation of these Conditions.

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006. For the purposes of determining whether a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 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 shall include all subordinate legislation made under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 References to clauses are to the clauses of these Conditions.
- 1.12 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 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 Each Order shall be deemed to be a separate offer by the Customer to purchase Products in accordance with these Conditions, which the Manufacturer shall be free to accept or decline at its absolute discretion. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 No Order shall be deemed to be accepted by the Manufacturer until it issues a written acceptance of the Order or an Order Number, at which point the Contract shall come into existence.
- 2.4 Each Order shall:

- 2.4.1 be given in writing or, if given orally, shall be confirmed in writing within two Business Days; and
- 2.4.2 specify the type and quantity of Products ordered and, where relevant, the Products' code numbers.
- 2.5 The Manufacturer shall assign an Order Number to each Order it accepts and notify those Order Numbers to the Customer together with the estimated Delivery Date by which the Products specified in an Order will be ready for delivery or collection. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 2.6 The Customer may within 14 days of placing an Order amend or cancel an Order by written notice to the Manufacturer. If the Customer amends or cancels an Order, its liability to the Manufacturer shall be limited to payment to the Manufacturer of all costs reasonably incurred by the Manufacturer in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to the Manufacturer where the amendment or cancellation results from the Manufacturer's failure to comply with its obligations under the Contract.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.8 A quotation for the Products given by the Manufacturer shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

### **3 PROVISION OF TECHNOLOGY & MATERIALS**

- 3.1 As soon as practicable after the Manufacturer accepts the Customer's Order, the Customer shall at its own cost disclose to the Manufacturer such Technology and Materials as are necessary to enable the Manufacturer to manufacture the Products in accordance with the Specification.
- 3.2 The disclosure of any Technology and Materials to the Manufacturer and any document containing or recording it in connection with the Contract is subject to the confidentiality provisions set out in clause 23.
- 3.3 To the extent that the Customer supplies a perfume compound to the Manufacturer for use in a Product, the Customer shall also supply the Manufacturer with a Safety Data Sheet. The Manufacturer shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Customer's failure to supply or delay in supplying any such Safety Data Sheet as required by this clause 3.3.
- 3.4 Upon completion of the supply of Products under an Order in accordance with these Conditions, the Manufacturer shall make available for collection by the Customer any remaining Technology and/or Materials relating to the Order in the Manufacturer's possession for a period of 90 days and shall notify the Customer of the same. If the Customer fails to collect any such Technology or Materials in accordance with this clause 3.4 then after expiry of the 90 day collection period the Manufacturer shall be free to dispose of the Technology or Materials in any way it sees fit and shall have no liability to the Customer as a result.

## **4 SAMPLES**

- 4.1 Unless otherwise agreed, the Manufacturer shall be under no obligation to provide a sample where the Customer's Order is:
  - 4.1.1 a repeat order of a Product previously supplied by the Manufacturer to the Customer; or
  - 4.1.2 an order for the filling of packaging supplied by the Customer with a perfume compound supplied by the Customer.
- 4.2 Subject to clause 4.1, the Manufacturer shall as soon as practicable after the disclosure of the Technology and Materials under clause 3.1 submit to the Customer for approval pre-production samples of the Product.
- 4.3 Where a sample is provided under clause 4.2, the Manufacturer shall not commence manufacture of the Product until the Customer has communicated its approval of the samples to the Manufacturer in writing (such approval not to be unreasonably withheld or delayed).
- 4.4 The Customer's approval of the samples constitutes irrevocable confirmation that:
  - 4.4.1 the Products manufactured in conformity with the samples (or differing only within normal industrial limits) will comply with the Specification; and
  - 4.4.2 the Products will meet the industry standards and requirements of quality specified in clause 7.1 and clause 7.2, except for defects which are not capable of being revealed on reasonable inspection by the Customer.

## **5 CONTRACT MANAGEMENT**

The Manufacturer and the Customer each undertake to co-operate with each other, and to provide on reasonable notice such information as the other party may reasonably request for the proper performance of its obligations under the Contract.

## **6 SUPPLY OF PRODUCTS**

- 6.1 The Manufacturer shall supply such quantities of Products as the Customer orders and purchases in accordance with these Conditions.
- 6.2 The Manufacturer shall supply a Safety Data Sheet, Allergen Report and an International Fragrance Association (IFRA) Conformity Certificate for each perfume compound Product supplied by it to the Customer.

## **7 MANUFACTURE, QUALITY AND PACKING**

- 7.1 The Manufacturer shall manufacture, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable.
- 7.2 The Manufacturer warrants and undertakes that the Products supplied to the Customer by the Manufacturer under the Contract shall, on Delivery:
  - 7.2.1 conform to the Specification;

- 7.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended); and
- 7.2.3 comply with all applicable statutory and regulatory requirements.
- 7.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4 The Manufacturer shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.
- 7.5 The Manufacturer shall obtain all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of the Contract.
- 7.6 The Manufacturer shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling and delivery of the Products.
- 7.7 The Manufacturer shall use a minimum content filling method when it is required to fill any container in the manufacture of Products. The Customer acknowledges this and undertakes that it shall not supply nor use any Materials, including labelling, in connection with the Products which is inconsistent with this clause 7.7. The Manufacturer shall have no liability whatsoever arising out of or in connection with the Customer's breach of this clause 7.7 and shall fully indemnify the Manufacturer in respect of any loss suffered or additional costs incurred as a result of the Customer's breach of this clause 7.7.

## **8 DELIVERY**

- 8.1 Either:
  - 8.1.1 the Manufacturer shall deliver the Products to the Delivery Location at any time after the Manufacturer notifies the Customer that the Products are ready; or
  - 8.1.2 where the Manufacturer agrees that the Customer may collect the Products, the Customer shall collect the ordered Products from the Delivery Location within three Business Days of the Manufacturer notifying the Customer in writing that the ordered Products are ready for collection.
- 8.2 Delivery is completed:
  - 8.2.1 when the Manufacturer is delivering Products to the Customer pursuant to clause 8.1.1: on the completion of unloading of the Products at the Delivery Location; or
  - 8.2.2 when the Customer is collecting Products pursuant to clause 8.1.2: on the completion of loading of the Products at the Delivery Location.
- 8.3 The Manufacturer may deliver Orders by instalments, which may be invoiced and paid for separately. References in these Conditions to Orders shall, where applicable, be read as references to instalments.
- 8.4 Where the Delivery Location is outside of the United Kingdom the Customer shall be responsible for obtaining all import licences and permits necessary for the entry of the Products into the relevant territory within which the Delivery Location is located. The

Customer shall be responsible for any customs duties, clearance charges, taxes, brokers' fees, tariffs and other amounts payable in connection with the importation and delivery of Products outside of the United Kingdom under the Contract.

8.5 All Delivery Dates quoted are approximate only. Time of Delivery shall not be of the essence of the Contract.

8.6 Delays in the delivery of an Order shall **not** entitle the Customer to:

8.6.1 refuse to take delivery of the Order;

8.6.2 claim damages; or

8.6.3 terminate the Contract, subject always to clause 24.1.2 and clause 24.1.16.

The Manufacturer shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Customer's actions or omissions, including any failure by the Customer to comply with its obligations under the Contract.

8.7 If the Customer fails to take delivery of an Order within three Business Days of the Manufacturer notifying the Customer that the Order is ready for delivery or collection, then, except where that failure or delay is caused by the Manufacturer's failure to comply with its obligations under the Contract:

8.7.1 delivery of the Order shall be deemed to have been completed at 9.00 am on the Delivery Date or where the Manufacturer has agreed that the Customer may collect the Order on the third Business Day following the day on which the Manufacturer notified the Customer that the Order was ready for collection; and

8.7.2 the Manufacturer shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

8.8 Each Order shall be accompanied by a delivery note from the Manufacturer showing the Order Number, the date of the Order, the type and quantity of Products included in the Order, including the code numbers of the Products, and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.

8.9 The parties agree that if, in respect of an Order, the Manufacturer delivers up to and including 5% more or less than the quantity of Products ordered, the Customer shall not be entitled to reject the Order, but a pro rata adjustment shall be made to the Order invoice.

8.10 Packaging materials shall remain the Manufacturer's property and the Customer shall make them available for collection at any times as the Manufacturer shall reasonably request. Returns of packaging materials shall be at the Manufacturer's expense. This clause 8.10 does not apply to Materials supplied by the Customer to the Manufacturer.

## **9 ACCEPTANCE AND DEFECTIVE PRODUCTS**

9.1 The Customer may reject any Products delivered to it that do not comply with clause 7.2, provided that:

9.1.1 notice of rejection is given to the Manufacturer:

- 9.1.1.1 in the case of a defect that is apparent on normal visual inspection, within five Business Days of Delivery;
- 9.1.1.2 in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 9.1.2 none of the events listed in clause 9.3 apply.
- 9.2 If the Customer fails to give notice of rejection in accordance with clause 9.1, it shall be deemed to have accepted these Products.
- 9.3 The Manufacturer shall not be liable for the Products' failure to comply with the warranty set out in clause 7.2 if:
  - 9.3.1 the Customer makes any further use of those Products after giving notice in accordance with clause 9.1;
  - 9.3.2 the defect arises because the Customer failed to follow the Manufacturer's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
  - 9.3.3 the defect arises as a result of the Manufacturer following any drawing, design or Specification, or other oral or written instructions, supplied by the Customer;
  - 9.3.4 the Customer alters or repairs those Products without the written consent of the Manufacturer;
  - 9.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 9.3.6 the Products differ from their description, or where applicable the Specification, as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4 If the Customer rejects Products under clause 9.1 then the Customer shall be entitled to:
  - 9.4.1 require the Manufacturer to repair or replace the rejected Products; or
  - 9.4.2 require the Manufacturer to repay the price of the rejected Products in full.

Once the Manufacturer has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' failure to comply with clause 7.2.
- 9.5 These Conditions shall apply to any repaired or replacement Products supplied by the Manufacturer.

## **10 TITLE AND RISK**

- 10.1 Risk in Products shall pass to the Customer on Delivery.
- 10.2 Title to Products shall not pass to the Customer until the earlier of:
  - 10.2.1 the Manufacturer receives payment in full (in cash or cleared funds) for the Products; and



- 10.2.2 the Customer reselling those Products, in which case title to those Products shall pass to the Customer at the time specified in clause 10.4.
- 10.3 Until title to Products has passed to the Customer, the Customer shall:
- 10.3.1 store those Products separately from all other goods held by the Customer so that they remain readily identifiable as the Manufacturer's property;
- 10.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
- 10.3.3 maintain those Products in satisfactory condition and keep them insured on the Manufacturer's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Manufacturer. The Customer shall obtain an endorsement of the Manufacturer's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Manufacturer to inspect those Products and the insurance policy; and
- 10.3.4 give the Manufacturer such information as the Manufacturer may reasonably require from time to time relating to:
- 10.3.4.1 the Products; and
- 10.3.4.2 the ongoing financial position of the Customer.
- 10.4 Subject to clause 10.5, the Customer may resell or use Products in the ordinary course of its business (but not otherwise) before the Manufacturer receives payment for the Products. However, if the Customer resells the Products before that time title to those Products shall pass from the Manufacturer to the Customer immediately before the time at which resale by the Customer occurs.
- 10.5 At any time before title to the Products passes to the Customer, the Manufacturer may:
- 10.5.1 by notice in writing, terminate the Customer's right under clause 10.4 to resell the Products or use them in the ordinary course of its business; and
- 10.5.2 require the Customer to deliver up all the Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.

## 11 PRODUCT RECALL

- 11.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market (**Recall Notice**) it shall immediately notify the Manufacturer in writing enclosing a copy of the Recall Notice.
- 11.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Manufacturer and only then in strict compliance with the Manufacturer's instructions about the process of implementing the withdrawal.
- 11.3 The Manufacturer may issue a notice to recall or withdraw the Products from the market (**Voluntary Recall Notice**) if:

- 11.3.1 the supply or use of the Products infringes, or may infringe, a third party's intellectual property rights;
- 11.3.2 the Products are, or may be, unsafe;
- 11.3.3 the Products are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
- 11.3.4 a defect in the Product may cause harm to the Manufacturer's reputation or brand; or
- 11.3.5 any other reasonable ground.
- 11.4 The Customer must:
  - 11.4.1 comply with any Recall Notice or Voluntary Recall Notice; and
  - 11.4.2 give such assistance as the Manufacturer reasonably requires to recall or withdraw the Product from the market, and comply with the Manufacturer's instructions about the process of implementing that recall or withdrawal.

## **12 PRODUCT LIABILITY**

- 12.1 If any claim is made against the Customer arising out of or in connection with the manufacture of or any defect in the Products, the Manufacturer shall, except to the extent that the claim is due to any defect in the Specification, the Technology or the Materials or arises as a result of the Manufacturer following the Customer's instructions, indemnify the Customer against all damages or other compensation awarded against the Customer in connection with the claim or paid or agreed to be paid by the Customer in settlement of the claim and all legal or other expenses incurred by the Customer in or about the defence or settlement of the claim.
- 12.2 The Customer shall notify the Manufacturer as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Manufacturer to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Customer being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.
- 12.3 The Customer warrants and undertakes that it shall not exceed the dosage level for any perfume compound Product as detailed in the relevant IFRA Conformity Certificate, whether the IFRA Conformity Certificate is provided by the Manufacturer to the Customer or by any other party to the Customer. The Manufacturer shall have no liability whatsoever arising out of or in connection with the Customer's breach of this clause 12.3.

## **13 PRODUCT PRICES**

- 13.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in the Manufacturer's published price list in force as at the Delivery Date.
- 13.2 The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Manufacturer, pay to the Manufacturer any additional amounts in respect of VAT as are chargeable on a supply of Products.
- 13.3 Unless otherwise agreed by the Manufacturer, the Product Prices are exclusive of the costs of packaging, insurance and carriage of the Products, which shall be paid by the Customer.

## **14 TERMS OF PAYMENT**

- 14.1 The Manufacturer shall be entitled to invoice the Customer for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.
- 14.2 Notwithstanding clause 14.1, the Manufacturer reserves the right to:
- 14.2.1 invoice the Customer in full immediately upon the Customer placing their Order; and
- 14.2.2 delay commencement of the manufacture and/or supply of Products until the Customer has paid the Manufacturer's invoice in accordance with clause 14.3.
- 14.3 The Customer shall pay invoices in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made by bank transfer to the bank account nominated in writing by the Manufacturer.
- 14.4 If a party fails to make payment due to the other party under the Contract by the due date, then, without limiting the other party's remedies under clause 24.1 (Termination), the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.
- 14.5 If the Customer disputes any invoice:
- 14.5.1 the Customer shall notify the Manufacturer in writing immediately, specifying the reasons for disputing the invoice;
- 14.5.2 the Manufacturer shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
- 14.5.3 the Customer shall pay to the Manufacturer all amounts not disputed by the Customer on the due date as set out in clause 14.3;
- 14.5.4 the parties shall negotiate in good faith to attempt to resolve the dispute promptly;
- 14.5.5 if the parties have not resolved the dispute within 14 days of the Customer giving notice to the Manufacturer, the dispute shall be resolved in accordance with clause 28.4 (Dispute Resolution Procedure); and
- 14.5.6 the Manufacturer's obligations to supply the Products shall not be affected by any payment dispute.
- 14.6 All payments payable to the Manufacturer by the Customer under the Contract shall become immediately due and payable on termination of the Contract for any reason. This clause 14.6 is without prejudice to any right to claim for interest under the law or under the Contract.

## **15 INSURANCE**

- 15.1 The Manufacturer has obtained the following insurance policies with reputable insurance companies:
- 15.1.1 public liability insurance with a limit of at least £5 million a claim; and

- 15.1.2 product liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year.
- 15.2 On the Customer's written request, the Manufacturer shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.
- 15.3 If the Customer permits subcontracting, the Manufacturer shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under the Contract.
- 15.4 The Manufacturer's liabilities under the Contract shall not be deemed to be released or limited by the Manufacturer taking out the insurance policies referred to in clause 15.1.
- 15.5 To the extent that the Manufacturer has agreed to store Technology or Materials supplied by the Customer or Products purchased by the Customer at the Manufacturer's premises, the Manufacturer shall insure such Technology, Materials or Products against the risk of fire only provided the Customer has informed the Manufacturer of the total value and requested the Manufacturer for such insurance cover and agreed to pay £5/th p.a.(five pounds per thousand per annum) towards to the cost otherwise the Customer acknowledges that Technology or Materials are stored at the Manufacturer's premises entirely at the Customer's own risk. In this case the Customer acknowledges and accepts that it is the Customer's obligation to obtain insurance against any other risk (for example theft) of any such Technology, Materials or Products whilst stored at the Manufacturer's premises.

## **16 COMPLIANCE WITH LAWS AND POLICIES**

- 16.1 In performing its obligations under the Contract, each party shall comply and shall procure that each member of its Group complies with all applicable laws, statutes, regulations and codes from time to time in force.
- 16.2 A party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a breach of clause 16.1.

## **17 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 17.1 The Manufacturer acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.
- 17.2 The Customer acknowledges that all Intellectual Property Rights used for the manufacture of the Product that originate from the Manufacturer shall remain the exclusive property of the Manufacturer (or, where applicable, the third party licensor from whom the Manufacturer derives the right to use them).
- 17.3 All Intellectual Property Rights in respect of any Improvement shall belong to the party who made, developed or acquired it.

## **18 LICENCE TO USE TECHNOLOGY AND TRADE MARKS**

- 18.1 The Customer grants to the Manufacturer a non-exclusive, transferable, royalty-free licence (including the right to grant sub-licences to permitted subcontractors) to use the Customer IPRs solely for the purpose of performing its obligations under the Contract.

- 18.2 The Manufacturer's use of the Trade Marks is limited to applying them to the Products in the form and manner specified by the Customer from time to time, and not otherwise.
- 18.3 The Manufacturer shall at the request and expense of the Customer take all such steps as the Customer may reasonably require to assist the Manufacturer in maintaining the validity and enforceability of the Customer IPRs, and shall enter into such formal licences as the Customer may reasonably request for this purpose.
- 18.4 The Manufacturer shall not represent that it has any title in or right of ownership to any of the Trade Marks or do or suffer to be done any act or thing which may in any way impair the rights of the Customer in any of the Trade Marks or bring into question the validity of their registration.

## 19 IMPROVEMENTS

- 19.1 The Customer shall at its own cost provide the Manufacturer with details of any Improvement belonging to the Customer which it wishes to be incorporated into the Product, or any other modification which it wishes to be made to the Product from time to time, and the Technology necessary to implement the Improvement. The Customer grants to the Manufacturer a non-exclusive, royalty-free, worldwide licence to use such Improvement or modification solely for the purposes of the Contract.
- 19.2 The Manufacturer shall provide the Customer with details of any Improvement which is made, developed or acquired by the Manufacturer from time to time.
- 19.3 The Customer may use any Improvement made or acquired by the Manufacturer for its own purposes and the Manufacturer grants to the Customer a non-exclusive, royalty-free, for the duration of the relevant Intellectual Property Right, worldwide licence to use Improvements discovered by the Manufacturer.
- 19.4 The disclosure of any Improvements by one party to the other shall be subject to the obligations of confidentiality set out in clause 23.

## 20 IPR INDEMNITY

- 20.1 The Customer shall indemnify the Manufacturer 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 and other reasonable professional costs and expenses) suffered or incurred by the Manufacturer arising out of or in connection with any claim made against the Manufacturer for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of the Customer IPRs, the Technology or the Materials in accordance with the terms of the Contract.
- 20.2 If any third party makes a claim, or notifies an intention to make a claim, against the Manufacturer that may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Manufacturer shall:
- 20.2.1 as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
- 20.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer;

- 20.2.3 give the Customer and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Manufacturer, to enable the Customer and its professional advisers to examine them and to take copies (at the Customer's expense) to assess the Claim; and
- 20.2.4 be deemed to have given the Customer sole authority to avoid, dispute, compromise or defend the Claim.
- 20.3 Nothing in this clause 20.3 shall restrict or limit the Manufacturer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## **21 LIMITATION OF LIABILITY**

- 21.1 References to liability in this clause 21 include every kind of liability of the parties to each other (including any liability for the acts or omissions of their respective employees and agents and subcontractors):
- 21.1.1 arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
- 21.1.2 for any use made or resale of the Products by the Customer, or of any product incorporating any of the Products.
- 21.2 Nothing in the Contract shall limit or exclude the liability of either party for:
- 21.2.1 death or personal injury resulting from negligence;
- 21.2.2 fraud or fraudulent misrepresentation;
- 21.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 21.2.4 breach of section 2 of the Consumer Protection Act 1987; or
- 21.2.5 the indemnity contained in clause 20.
- 21.3 Subject to clause 21.2, neither party shall under any circumstances whatsoever be liable to the other for any:
- 21.3.1 loss of profit;
- 21.3.2 loss of goodwill;
- 21.3.3 loss of business;
- 21.3.4 loss of business opportunity;
- 21.3.5 loss of anticipated saving;
- 21.3.6 loss or corruption of data or information; or
- 21.3.7 special, indirect or consequential damage,

suffered by the other party that arises under or in connection with the Contract.

21.4 Subject to clause 21.2, the Manufacturer's total liability to the Customer in respect of each Order shall not exceed the greater of:

21.4.1 £25,000; or

21.4.2 the total aggregate price of the Products in the Order.

## **22 ASSIGNMENT AND OTHER DEALINGS**

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party.

## **23 CONFIDENTIALITY**

23.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after expiry or termination of it for any reason disclose to any person any Confidential Information, except as permitted by clause 23.2.

23.2 Each party may disclose the other party's Confidential Information:

23.2.1 to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its Representatives to whom it discloses the other parties Confidential Information comply with this clause 23; and

23.2.2 as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.

23.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Contract are granted to the other party or to be implied from the Contract. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

23.4 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **24 TERMINATION AND SUSPENSION**

24.1 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:

24.1.1 the other party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

24.1.2 the other party commits a material breach of any other term of the Contract and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 24.1.3 the other party repeatedly breaches any of the terms of the Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 24.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) of 123(2) of the Insolvency Act 1986;
- 24.1.5 the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 24.1.6 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 24.1.7 a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the other party (being a company, a limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 24.1.8 an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 24.1.9 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 24.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 24.1.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 24.1.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 24.1.4 to clause 24.1.11 inclusive;
- 24.1.13 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business;
- 24.1.14 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- 24.1.15 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or



- 24.1.16 any Force Majeure Event prevents the other party from performing its obligations under the Contract for any continuous period of 12 weeks.
- 24.2 Without affecting any other right or remedy available to it, the Manufacturer may terminate the Contract or any Order on giving not less than 7 days' notice to the Customer. The Customer's sole remedy as a result of termination of the Contract or any Order under this clause 24.3, shall be to receive a refund of any sums paid to the Manufacturer in respect of Products ordered but not supplied as at the date of termination.
- 24.3 Without limiting its other rights or remedies, the Manufacturer may suspend provision of the Products under the Contract or any other contract between the Customer and the Manufacturer if the Customer becomes subject to any of the events listed in clause 24.1.4 to clause 24.1.12, or the Manufacturer reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

## **25 OBLIGATIONS ON TERMINATION**

Subject to clause 3.4, on termination of the Contract, each party shall promptly:

- 25.1.1 return to the other party all other equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the manufacture, supply and purchase of the Products under the Contract;
- 25.1.2 return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- 25.1.3 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- 25.1.4 on request, certify in writing to the other party that it has complied with the requirements of this clause 25.

## **26 FORCE MAJEURE**

- 26.1 Force Majeure Event means any circumstance not in a party's reasonable control including, without limitation:
- 26.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 26.1.2 epidemic or pandemic;
- 26.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;
- 26.1.4 nuclear, chemical or biological contamination, or sonic boom;
- 26.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- 26.1.6 collapse of buildings, fire, explosion or accident;
- 26.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

- 26.1.8 non-performance by suppliers or subcontractors; and
- 26.1.9 interruption or failure of utility service.
- 26.2 Provided it has complied with clause 26.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 26.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 26.4 The Affected Party shall:
- 26.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- 26.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 26.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 4 weeks' written notice to the Affected Party.

## **27 MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**

- 27.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause 28.4:
- 27.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, a Director of the Manufacturer and a Director of the Customer shall attempt in good faith to resolve the Dispute;
- 27.1.2 if the Director of the Manufacturer and the Director of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed by the parties the mediation will start not later than 14 days after the date of the ADR notice.
- 27.2 No party may commence any court proceedings under clause 28.11 (Jurisdiction) in relation to the whole or part of the Dispute until 21 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

27.3 If the Dispute is not resolved within 21 days after service of the ADR notice for any reason, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28.11 (Jurisdiction) in the Contract.

## 28 GENERAL

28.1 **Survival:** 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. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Contract that existed at or before the date of termination.

28.2 **Costs:** Except as expressly provided in the Contract, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of the Contract.

28.3 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under clause this clause 28.3, the parties shall negotiate in good faith agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

28.4 **Further assurance:** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.

28.5 **Variation:** No variation of the Contract shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

28.6 **Waiver:** A waiver of any right or remedy under the Contract or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy. A party that waives a right or remedy provided under the Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

28.7 **Notices:** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the addresses specified in the Order.

28.7.1 Any notice shall be deemed to have been received:

28.7.1.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

28.7.1.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

- 28.7.1.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 28.7.1.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 28.7.2 This clause 28.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 28.8 **Entire agreement:** The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 28.9 **Third party rights:** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 28.10 **Governing law:** 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.
- 28.11 **Jurisdiction:** 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.