

TERMS AND CONDITIONS OF PURCHASE
Applicable to Goods for resale and Goods and/or Services not for resale

The Terms set out in Section 2 apply to all Contracts, subject to the exclusions set out in the Purchase Order and subject to the country specific terms as set out in Section 1 below.

SECTION 1 – COUNTRY SPECIFIC TERMS

1 Australia

- 1.1 The provisions contained in this paragraph 1 shall apply where either the Buyer and/or the Supplier is domiciled in Australia.
- 1.2 In the definition of "Personal Data", after the words "Data Protection Act 1998" and before the words ("DP Legislation)", the following words shall be added: "and/or the Privacy Act (Cth) 1988 as applicable".
- 1.3 Clause 22.8 shall be deleted in its entirety and replaced with the following new clause 22.8: "**Governing Law and Jurisdiction:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of Victoria, Australia. The United Nations International Convention on the Sale of Goods shall not apply. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, Australia to settle any claim or dispute that arises from or in connection with the Contract or its subject matter."

2 Ghana

- 2.1 The provisions contained in this paragraph 2 shall apply where both the Buyer and the Supplier are domiciled in Ghana.
- 2.2 In the definition of "Personal Data", after the words "Data Protection Act 1998" and before the words ("DP Legislation)", the following words shall be added: "and/or the Data Protection Act 2012 (Act 843) as applicable".
- 2.3 In clause 10, after the words "inclusive of VAT or its equivalent applicable sales tax(es) ("VAT")" and before the words "unless otherwise agreed in writing between the parties" the following words shall be added: "and National Health Insurance Levy".

3 Greece

- 3.1 The provisions of mandatory Greek law set out in this paragraph 3 shall apply where either the Buyer and/or the Supplier are domiciled in Greece.
- 3.2 In the definition of "Personal Data", after the words "have the meaning given to them in" and before the words ("DP Legislation)", the following words shall be added: "Law 2472/1997".
- 3.3 In clause 7.2, the following words shall be inserted at the start of the final sentence: "To the extent permitted under applicable law,".
- 3.4 In clause 10.7, after the words "base rate of Barclays Bank plc" and before the words "from the date on which such payment...", the following words shall be added: "or if this exceeds the maximum default interest rate applicable in Greece, at the maximum default interest rate permitted under Greek law,".
- 3.5 In clause 19.1, after the words "by giving the Supplier written notice" and before the words ";or (b) to any third party", the following words shall be added: "and with the consent of the Supplier as regards the obligations of the Buyer".
- 3.6 Clause 21.3 shall be deleted in its entirety and replaced with the following new clause 21.3: "The Buyer, in its capacity as the Data Controller, hereby appoints the Supplier as the Data Processor of the Personal Data that will be processed by the Supplier in the context of provision of the Services. The Supplier accepts this appointment and undertakes (i) to implement appropriate technical and organisational measures to safeguard Personal Data against unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of Personal Data, (ii) to make use of personnel and any sub-contractors that will have corresponding professional qualifications that provide sufficient guarantees in respect of technical expertise and personal integrity to ensure

the confidentiality of the personal data, and (c) to only process Personal Data (a) for the purpose of providing Goods or Services (or both) to the Buyer; and (b) on behalf and in accordance with the Buyer's instructions. The Supplier shall not process the Personal Data outside the EU without the prior written consent of the Buyer. The Supplier shall ensure that it has adequate security programmes and procedures in place to ensure that unauthorised persons do not have access to any equipment used to process such data or on which any relevant software or data is stored."

- 3.7 In clause 22.8, after the words "accordance with the laws of England and Wales" the following words shall be added: ", without prejudice to any applicable mandatory rules."

4 Indonesia

- 4.1 The provisions contained in this paragraph 4 shall apply where both the Buyer and Supplier are domiciled in Indonesia.

- 4.2 In the definition of "Personal Data", after the words "Data Protection Act 1998" and before the words ("DP Legislation)", the following words shall be added: "and/or the prevailing Laws and Regulations in Indonesia, including but not limited to Law No. 11 of 2008 regarding Electronic Information and Transaction and its implementing regulations".

- 4.3 A new clause shall be inserted as clause 13.7 which shall read as follows: "The parties hereby waive Article 1266 of the Indonesian Civil Code to the extent that it requires a judicial order to give effect to the termination of this Contract."

- 4.4 At the end of clause 20.1, after the words "Bribery Act 2010" and before the words ("Anti-bribery Laws)", the following words shall be added: "and/or Law No. 31 of 1999 regarding Eradication of Corruption as amended with Law No. 20 of 2001 regarding amendment of Law No. 31 of 1999 and all of its implementing regulations".

- 4.5 Clause 22.8 shall be deleted in its entirety and replaced with the following new clause 22.8: "**Governing Law and Jurisdiction:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of Indonesia. The United Nations International Convention on the Sale of Goods shall not apply. The parties irrevocably submit to the non-exclusive jurisdiction of the Singapore International Arbitration Centre ("**SIAC**") to settle any claim or dispute that arises from or in connection with the Contract or its subject matter in accordance with the Arbitration Rules of the SIAC."

- 4.6 A new clause 22.10 shall be inserted and shall read as follows: "**Language:** The Contract is written and executed in the English and Indonesian language, provided that, in the event of inconsistency or difference in interpretation between the English language and Indonesian language version, the English language version shall prevail to the extent permitted by law. The relevant Indonesian language text will be deemed to be amended to conform with the relevant English text. Notwithstanding the provisions of Law No. 24 of 2009 on National Flag, Language, Emblem and Song ("**Law No. 24 of 2009**") and pending the issuance of its implementing regulations, the parties have agreed in good faith that each party will not (and it will not allow or assist any party) in any manner or forum in any jurisdiction, challenge the validity of, or raise or file any objection to, this agreement or the transactions contemplated herein on the basis of any failure to comply with Law No. 24 of 2009 or any of its implementing regulations (when issued)."

5 Kenya

- 5.1 The provisions contained in this paragraph 5 shall apply where either the Buyer and/or the Supplier are domiciled in Kenya.

- 5.2 Clause 22.8 shall be deleted in its entirety and replaced with the following new clause 22.8: "**Governing Law and Jurisdiction:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of England and Wales. The United Nations International Convention on the Sale of Goods shall not apply. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Kenya to settle any claim or dispute that arises from or in connection with the Contract or its subject matter."

6 Poland

- 6.1 The provisions contained in this paragraph 6 shall apply where both the Buyer and the Supplier are domiciled in Poland.

- 6.2 In clause 10.7, the words "the rate per annum of 2 per cent above the base rate of Barclays Bank plc in force" shall be deleted and replaced with the following: "the lower of (i) the rate per annum of 2 percent above the base rate of Barclays Bank plc; or (ii) four times the Lombard credit rate of the National Bank of Poland".
- 6.3 In clause 12.1, the following words shall be added as a final sentence: "In case of the purchase of Goods this right may be exercised within 3 years from the conclusion of the Contract."
- 6.4 In clause 13.6, the following words shall be added as a final sentence: "In case of the purchase of Goods this right may be exercised within 3 years from the conclusion of the Contract."
- 6.5 In clause 16.1, after the words "Supply of Goods and Services Act 1982;" and before the words ";or (v) to the extent such limitation or exclusion is not permitted by law" the following words shall be inserted: "; (v) in respect of damage caused to the other party intentionally;" and clause 16.1(v) shall be renumbered accordingly.
- 6.6 Clause 22.1 shall be deleted in its entirety and replaced with the following new clause 22.1: "**Notices:** Any notice given under the Contract shall be in writing in English served by hand, prepaid first class recorded delivery or first class registered post, marked for the attention of the Company Secretary (or in the absence of a Company Secretary, a Director of the party), and sent to the parties' registered address (or in the absence of a registered address the last known address). Notices shall be deemed to have been received at the moment they have reached the addressee in such a way that the addressee could have acquainted himself with the contents of the notice. For the avoidance of doubt, notice given under this Contract shall not be validly served if sent by email. A notice expressed electronically shall be deemed made to the addressee at the moment of its introducing into an electronic communication means in such a way that enabled the addressee to acquaint himself with the contents of the notice."

7 Thailand

- 7.1 The provisions contained in this paragraph 7 shall apply where both the Buyer and the Supplier are domiciled in Thailand.
- 7.2 In clauses 2.2 and 2.3 of the Terms, the words "the Contract (Rights of Third Parties) Act 1999" shall be deleted and replaced with the words "the Thai Civil and Commercial Code, section 374-376".
- 7.3 In clause 22.1, in the penultimate sentence the words "shall be deemed to have been received the second business day after posting" shall be deleted and replaced with the words "shall be deemed to have been received on actual receipt by the recipient".

8 UAE

- 8.1 The provisions contained in this paragraph 8 shall apply where the Supplier is domiciled in Dubai.
- 8.2 Clause 22.1 shall be deleted in its entirety and replaced with the following new clause 22.1: "**Notices:** Any notice given under the Contract shall be in writing in English served by hand or sent by a recognised commercial courier service, marked for the attention of the Company Secretary, a Director or the General Manager of the party, and sent to the party's registered address (or to such other address as may from time to time be notified in writing by the party to the other party). Notices served by hand or sent by a recognised commercial courier service shall be deemed to have been received at the time of delivery if during business hours, and at the start of the next business hour if not. For the avoidance of doubt, notice given under this Contract shall not be validly served if sent by email."
- 8.3 A new clause 22.10 shall be inserted and shall read as follows: "Neither the Terms, the Purchase Orders nor any other documents referred to therein are registrable or may be registered with any public or private authority, department, company, entity or organisation under UAE Federal Law No. 18 of 1981 on the Organisation of Commercial Agencies."
- 8.4 Clause 22.8 shall be deleted in its entirety and replaced with the following new clause 22.8: "**Governing Law and Jurisdiction:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of the Dubai International Financial Centre ("**DIFC**"). The United Nations International Convention on the Sale of Goods shall not apply. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the DIFC to settle any claim or dispute that arises from or in connection with the Contract or its subject matter."

9 USA (New York)

- 9.1 The provisions contained in this paragraph 9 shall apply where either the Buyer and/or the Supplier is domiciled in the USA.
- 9.2 In clause 10.7, the words "the rate per annum of 2 per cent above the base rate of Barclays Bank plc in force" shall be deleted and replaced with the following: "the lower of (i) the rate per annum of 2 percent above the base rate of Barclays Bank plc; or (ii) the maximum rate of interest permitted under Relevant Law".
- 9.3 **THE BUYER'S ATTENTION IS DRAWN TO THE LIABILITY CLAUSES SET OUT IN CLAUSES 16.1, 16.2, 16.3 AND 16.4 OF THESE TERMS AS SET OUT IN SECTION 2 BELOW.**
- 9.4 A new clause 22.10 shall be inserted and shall read as follows: **"EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY."**
- 9.5 A new clause 22.11 shall be inserted and shall read as follows: "If the Buyer is located in the United States, and a court of competent jurisdiction does not honour the choice of the laws of England and Wales to govern the Contract as set forth in clause 22.8, then the parties agree that the Contract will be governed by the laws of New York."

SECTION 2 – TERMS AND CONDITIONS OF PURCHASE

1 Definitions

1.1 In this Contract, the following definitions apply:

Affiliate means in relation to either party, any company from time to time directly or indirectly (i) Controlling, (ii) Controlled by or (iii) under common Control with, that person.

Buyer means the entity who has contracted with the Supplier, as identified in the "invoice to" section of the Purchase Order.

Buyer Group means (i) the Buyer's Affiliates; (ii) PZ Cussons Beauty LLP and its subsidiaries; and (iii) any Joint Ventures to which the Buyer or any of the entities described in (i) is a party for the time being.

Buyer Premises means any premises owned, leased, licensed or otherwise controlled and/or occupied by any member of the Buyer Group from time to time.

Buyer Property means all items and materials of whatever nature (including any IPRs in such items or materials) provided or otherwise made available by the Buyer to the Supplier in connection with the Contract.

Confidential Information means for either party to this Contract (first party) any and all information relating to the business affairs, developments, personnel, suppliers of the first party (or any of its Affiliates), in whatever form, whether in oral, tangible or in documented form, that (i) is by its nature confidential; and/or (ii) the other party knows or ought to know is confidential; and/or (iii) is designated by the first party as confidential.

Contract means the contract between the Buyer and the Supplier for the sale and purchase of Goods and/or Services and consisting of the Terms and Conditions of Purchase ("**Terms**") set out in this document together with the annotated Purchase Order submitted to the Supplier and any Special Conditions specified in the Purchase Order, all as amended from time to time in accordance with clause 2.5. For the avoidance of doubt, each Purchase Order submitted shall constitute a separate Contract.

Control in relation to a body corporate means:

- (i) holding or being beneficially entitled to more than 50% of that body's equity share capital;
- (ii) having more than 50% of the voting power in anybody;
- (iii) in relation to a partnership the right to a share of more than one half of the income or assets of the partnership; or
- (iv) the power by whatever means and whether directly or indirectly to achieve the result that the affairs of that body are conducted in accordance with the controlling person's wishes,

and **Controlled** and **Controlling** shall be interpreted accordingly.

Force Majeure Event means any: a) fire, flood, earthquake, elements of nature or act of God; or b) governmental act, war, riot, civil disorder, terrorism, rebellion or revolution; or c) strikes, lock-outs or labour disputes (but in each case excluding those of the non-performing party's employees or employees of that party's subcontractors); or d) other causes similar to the above beyond a party's reasonable control.

Forecast means (where relevant) the Buyer's forecast of the Goods that it estimates it shall purchase from the Supplier during a particular period.

Goods means the items identified as such in the Purchase Order, as applicable.

Intellectual Property Rights (IPR) means patents, utility model rights, copyright, trade marks, service marks, trade, business and domain names, database rights, design rights, topography rights, moral rights, goodwill, rights in any Confidential Information (including know-how, business methods, data and trade secrets) and all other similar or analogous rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights in each case in any part of the world.

Personal Data means any and all personal data in respect of which any member of the Buyer Group is a data controller and which shall be processed by the Supplier in the performance of its obligations under this Contract, where **personal data, process, data controller** and **data processor** have the meanings given to them in the Data Protection Act 1998 ("DP Legislation").

Purchase Order means the written purchase order for the supply of Goods and/or Services issued by the Buyer to the Supplier and **PO** shall be interpreted accordingly

Services means all the obligations of the Supplier under this Contract, including the provision of any Goods and performance of the services described in the PO and/or Special Conditions and including the supply of any items or other deliverables required to be supplied as a result of performing such obligations.

Special Conditions means any additional terms or conditions, including product specifications or drawings, which are agreed by the parties at the time to form part of the Contract and which will apply to the Goods and/or Services.

Supplier means the person, firm, company or other incorporated or unincorporated body identified in the PO as supplying the Goods or Services.

1.2 Unless otherwise stated or unless the context otherwise requires:

1.2.1 a reference to a particular law is a reference to it as amended and in force for the time being, and to any legislation which re-enacts or consolidates it, and includes all orders, regulations, instruments and other subordinate legislation for the time being in force made under it;

1.2.2 headings do not affect the interpretation of this Contract;

1.2.3 the terms "including", "includes", "for example" and in particular do not limit the generality of the words that came before those terms.

1.3 If and to the extent only of any conflict between these Terms, the PO and the Special Conditions, the order of precedence shall be, in descending order:

1.3.1 the PO;

1.3.2 these Terms; and

1.3.3 the Special Conditions (including any ancillary documents/emails specified therein).

2 Application of Terms and Benefit of Supply

2.1 The PO is the Buyer's offer to purchase Goods and/or Services. These Terms shall apply to the exclusion of all other terms and conditions containing or referred to in any acknowledgement or acceptance of order, specification, delivery note or other communication sent by the Supplier to the Buyer. Acceptance of the PO shall be the Supplier's acceptance of the Buyer's offer. Acceptance shall be deemed to take place at the earlier of:

2.1.1 the Supplier's communication of its acceptance of the PO by telephone or email within 72 hours of receipt of such PO; or

2.1.2 the Supplier carrying out any act consistent with accepting the PO.

- 2.2 Each and every obligation of the Supplier under this Contract is owed to the Buyer and each member of the Buyer Group who may enforce the terms of this Contract under the Contracts (Rights of Third Parties) Act 1999 and place POs, and references to the Buyer in the context of the Supplier's obligations shall be interpreted accordingly.
- 2.3 Except as set out in clause 2.2, a person who is not a party to this Contract is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 2.4 If someone who is not a party to this Contract is stated to have the right to enforce any of its terms, the parties may rescind or vary this Contract without the consent of that person.
- 2.5 This Contract may be varied only by written agreement which is signed by an authorised representative of each party. Unless expressly stated otherwise and agreed to in writing by an authorised representative of the Buyer, any quotation, confirmation of order, delivery note or other standard document of the Supplier shall not expressly vary this Contract.

3 Provision of Goods and Services

- 3.1 The Supplier shall provide the Goods and/or perform Services in accordance with the terms and conditions set out in this Contract, and shall devote the time, attention and abilities necessary in order to properly provide the Goods and/or perform the Services.
- 3.2 If the Supplier is unable to supply the Goods and/or perform the Services for any reason, it shall immediately inform the Buyer and give the reason and the likely length of the inability. Likewise, if the Supplier becomes aware of any fault or potential fault in any Goods, it shall inform the Buyer immediately and give as much detail as possible about the nature of such fault. These obligations on the Supplier shall be without prejudice to any rights or remedies available to the Buyer.
- 3.3 The Supplier shall meet any performance dates for the Services specified in the PO and/or the Special Conditions or notified to the Supplier by the Buyer.
- 3.4 In providing the Goods and/or performing the Services the Supplier shall act at all times in accordance with the Buyer's "Supplier Code of Conduct" which shall be accessible via the Buyer's website at http://www.pzcussons.com/en_int/downloads/469/download, as amended from time to time.

4 Goods

- 4.1 The Supplier shall ensure that the Goods (and all other deliverables provided by the Supplier pursuant to the Contract):
- 4.1.1 shall be of appropriate design, quality, material and workmanship and free from defect;
 - 4.1.2 conform to the quantities, quality, standards, descriptions, stipulations, drawings, samples, patterns and specifications set out or referred to in the PO and/or Special Conditions;
 - 4.1.3 are fit for any purpose held out by the Supplier or made known to it either expressly or by implication by the Buyer;
 - 4.1.4 comply with the Contract and continue to do so throughout the warranty period agreed between the Supplier and the Buyer which will in any event be no less than the standard warranty period offered by the Supplier or (in the case of Goods) the standard warranty period offered by the manufacturer of the Goods ("**Warranty Period**");
 - 4.1.5 comply with all statutes, enactments, orders, regulations, guidance or other similar instrument in any jurisdiction, including any jurisdiction from which the Goods and/or Services are provided or in which any Goods and/or Services are received (or both), which relate to the performance of this Contract ("**Relevant Laws**") relating to the manufacture, packaging, supply and sale of the Goods at the time when the same are supplied.

5 Services

- 5.1 The Supplier shall:
- 5.1.1 ensure that the Services are performed with all due skill and care, in accordance with best industry practice and are fit for the purpose held out by the Supplier or made known to it either expressly or by implication by the Buyer;
 - 5.1.2 obtain and maintain in force at all times all licences, consents, permissions, authorisation and permits needed to perform the Services;

- 5.1.3 perform the Services in accordance with all standards, descriptions and requirements set out or referred to in the PO and/or the Special Conditions;
- 5.1.4 allocate sufficient numbers of appropriately skilled and experienced personnel, and all necessary equipment, resources and facilities to perform the Services;
- 5.1.5 perform the Services in accordance with all Relevant Laws; and
- 5.1.6 fully co-operate with the Buyer in all matters relating to the performance of the Services.

6 Delivery, Risk and Title

- 6.1 The Supplier shall deliver the Goods on the date set out in the PO and in accordance with the Incoterm adopted as identified in the "Incoterms" section of the PO or on such other date or to such other location specified by the Buyer.
- 6.2 If so requested by the Buyer, Goods and/or Services shall be delivered by instalments. Each instalment shall be treated as having been a separate PO.
- 6.3 Time of delivery of the Goods and/or performance of the Services shall be of the essence of the Contract.
- 6.4 Each delivery of Goods shall be accompanied by a delivery note stating the PO number and details of the Goods included in the delivery, including the number of packages delivered and in the case of part delivery (where previously approved by the Buyer), the number of outstanding packages to be delivered and agreed dates for delivery.
- 6.5 Goods delivered in excess of the quantities set out in the PO shall remain at the risk of the Supplier and shall be returnable at the Supplier's expense. The Buyer shall not be bound to pay for any such excess unless it agrees in writing to accept such excess.
- 6.6 Goods shall remain at the risk of the Supplier until actual delivery to the Buyer including unloading and stacking.
- 6.7 Title to the Goods shall pass to the Buyer on the earlier of actual delivery or payment for the Goods (in whole or in part). Title to the Goods shall pass to the Buyer with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party.
- 6.8 The Goods shall be properly packed and secured in such a manner as to reach their destination in a good condition. Packaging material shall not be charged for and the Buyer shall have no obligation to return the same to the Supplier.
- 6.9 The Supplier shall ensure that the Goods conform to the Contract. The Buyer shall have a reasonable amount of time and in any event no less than 28 days to inspect and/or test the Goods following delivery. The Buyer shall be entitled to reject the Goods (i) if they do not comply with the Contract, or (ii) following acceptance, within a period of 14 days of discovery of any latent defect in the Goods.

7 Buyer Property and Intellectual Property Rights

- 7.1 All Buyer Property shall remain the exclusive property of the Buyer. The Supplier shall (a) use Buyer Property solely for the purpose of complying with its obligations under this Contract and in accordance with the Buyer's written instructions, (b) keep Buyer Property in its possession and maintain the same in good condition and (c) not dispose of any Buyer Property without the prior written instruction of the Buyer.
- 7.2 All IPR (a) in any Goods or other items of whatever nature created or developed pursuant to this Contract, and/or (b) created or developed in the provision of the Services (each **New IPR**) shall vest exclusively in the Buyer. The Supplier hereby assigns absolutely (and shall procure that all relevant third parties assign absolutely) to the Buyer (or, at the Buyer's option any member of the Buyer Group), by way of present assignment of existing and all future property, right, title and interest of whatever nature, all New IPR, all of which shall vest in the Buyer immediately upon creation of the same with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party, together with the right to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such New IPR. The Supplier hereby waives and shall ensure that all relevant third parties waive any moral rights in or relating to any New IPR and shall on request provide the Buyer with written evidence of such waiver.
- 7.3 The Supplier grants to each member of the Buyer Group (and its respective employees, officers, agents, contractors and subcontractors) a worldwide, royalty-free, non-exclusive, transferable, perpetual, irrevocable licence (including the right to grant sub-licences) to use and copy (i) any and all IPR (excluding New IPR assigned to the Buyer) in the Goods, and (ii) any other IPR to the extent necessary to (a) receive or use the Services; (b) to enable the full benefit of ownership of the Goods, and/or (c) perform its obligations or exercise its rights under this Contract.

- 7.4 Without prejudice to the obligation under clause 8 (Warranties), if any of the Goods and/or Services (or item used in the delivery thereof) becomes, or in the reasonable opinion of the Buyer is likely to become the subject of an infringement claim, the Supplier shall, upon the Buyer's request:
- 7.4.1 procure for the Buyer, each other member of the Buyer Group (as applicable), and, if required in order to provide the Goods and/or Services, the Supplier the right to continue to use or receive the relevant Goods and/or Services in accordance with or as contemplated by this Contract; or
- 7.4.2 modify or substitute the relevant Goods and/or Services so that they are non-infringing, provided that any such modification or substitution shall not degrade the performance or quality of the affected item.

8 Warranties

- 8.1 The Supplier warrants, represents and undertakes to the Buyer that:
- 8.1.1 it has and will at all times have the right to sell the Goods and/or perform the Services;
- 8.1.2 it has and will continue to hold all such licences as are necessary in order to sell the Goods and/or perform the Services;
- 8.1.3 it has and will at all times have full capacity and authority to enter into and perform this Contract and the full authority to grant the licences granted by the Supplier under this Contract;
- 8.1.4 the performance of its obligations under this Contract and the Buyer's receipt and use of the Services, any Intellectual Property Rights provided or made available, any Confidential Information disclosed to it by the Supplier, any of the Goods and the exercise of any rights granted under any licences granted by the Supplier to the Buyer will not infringe any Intellectual Property Rights (or moral rights) or any other rights of any third party.

9 Audit and Inspection

- 9.1 The Supplier shall allow the Buyer's employees, officers, agents, consultants, subcontractors and regulators ("**Auditors**") to access its premises and/or records and information during normal business hours or, in the case of clause 9.2, at any time for the purposes of ensuring compliance with this Contract. The Supplier shall cooperate fully with the Buyer's Auditors (and shall obtain the cooperation of its employees, officers, agents, consultants and subcontractors as necessary) in relation to any reasonable request for information concerning such compliance which includes permitting copying of records and documents and taking such copies away.
- 9.2 The Supplier acknowledges that the Buyer takes the risk of fraud or commission of any criminal offence by persons engaged by it (including the Supplier and its employees, officers, agents, consultants and subcontractors) very seriously. The Supplier agrees to cooperate with the Buyer in any way required by the Buyer and at any time to ensure the prevention of such fraud or commission of criminal offence, including assisting the Buyer with any investigations of alleged fraud or commission of criminal offence by the Supplier (including its employees, officers, agents, consultants and subcontractors).

10 Charges and Payment

- 10.1 The amount payable for the Goods supplied and/or Services performed in accordance with this Contract (the "**Charges**") shall be as set out in the PO. The Charges shall be inclusive of VAT or its equivalent applicable sales tax(es) ("**VAT**") unless otherwise agreed in writing between the parties and set out in the PO. Other charges including expenses, delivery, applicable discounts, packaging, freight, carriage insurance, loading and off loading shall be determined according to the Incoterm adopted as identified in the "Incoterms" section of the PO.
- 10.2 The Supplier shall not be entitled to claim any expenses from the Buyer unless it has received prior written approval from the Buyer.
- 10.3 The Supplier shall invoice the Buyer in compliance with any Relevant Laws (including any applicable tax and VAT requirements), in such form as the Buyer specifies from time to time, upon acceptance of the Goods and/or completion of the Services. Invoices must show the PO number, the date of delivery of Goods/receipt of Services and the "Ship-To" address. The Buyer reserves the right to withhold any payments insofar as Goods or Services have not been supplied to the satisfaction of the Buyer. Invoices will be addressed to the accounts department at the address set out in the "Invoice to" section of the PO.
- 10.4 Unless otherwise agreed in writing, the Buyer shall pay for the Goods and/or Services within 90 days of the end of the month in which the invoice is dated. Time for payment shall not be of the essence to the Contract. If the Buyer (acting reasonably) disputes any amount set out in an invoice, it shall pay the undisputed amount only. The parties shall correspond with the aim of reaching agreement on any disputed amounts within 15 days of the date on which the Buyer notified the Supplier of such dispute.

- 10.5 Payment for Goods and/or Services is without prejudice to any claims or rights which the Buyer may have against the Supplier and shall not amount to acceptance of the Goods and/or Services.
- 10.6 The Buyer reserves the right to set off any amount owing to it from the Supplier howsoever arising against any sums payable by the Buyer to the Supplier, and to withhold any payments to the extent that Goods or Services have not been supplied to the Buyer's reasonable satisfaction.
- 10.7 Each party shall be entitled to receive interest on any payment not made when properly due and payable pursuant to the terms of this Contract, calculated from day to day at the rate per annum of 2 per cent above the base rate of Barclays Bank plc in force from the date on which such payment was due until and including the date of actual payment. The parties agree that this clause provides them with a substantial remedy in respect of any late payment of sums due under this Contract. Interest shall not accrue or be payable on any monies or payment set-off pursuant to clause 10.6.

11 Forecasting

- 11.1 Where the parties have agreed that the Buyer shall provide Forecasts, such Forecasts shall be given in writing, or if given orally, confirmed in writing.
- 11.2 Forecasts shall not constitute POs and shall be subject to variation by the Buyer.
- 11.3 The Buyer will prepare each Forecast in good faith and with due care and otherwise in accordance with good practices.
- 11.4 If the Supplier anticipates that it will be unable to meet the requirements of a Forecast:
- 11.4.1 the Supplier will inform the Buyer in writing as soon as practicable; and
 - 11.4.2 without limiting any other right or remedy that the Buyer may have, the Buyer may decide to agree alternative delivery dates for the relevant Goods, or obtain substitute Goods from a third party.

12 Variation and Cancellation

- 12.1 The PO may be amended or cancelled without liability on the part of the Buyer (save as provided at clause 12.2) at any time before the dispatch of Goods and/or performance of the Services by giving written notice to the Supplier.
- 12.2 In relation to bespoke Goods or Services supplied to the Buyer in accordance with the Buyer's particular specification, if the Buyer cancels or amends the PO in accordance with clause 12.1 above then it shall pay an amount equal to the actual cost of labour and materials expended on work in progress from the date of acceptance of the PO to the date of service of a notice amending or cancelling the PO but only to the extent that such work has been carried out in accordance with any previously-agreed time scales, less the Buyer's reasonable estimate of the likely proceeds of sale of the work in progress. The results of any such work in progress (including any deliverables or other material, whether complete or not) shall be delivered to the Buyer by the Supplier as soon as reasonably possible.

13 Termination

- 13.1 This Contract shall continue unless otherwise terminated by either party in accordance with the provisions set out below.
- 13.2 Termination of the Contract shall be without prejudice to any rights or remedies which may have accumulated as at termination.
- 13.3 Termination or expiry of the Contract for any reason shall not affect the coming into force or the continuation in force of any provisions which is expressed or implied to come into force on or after such expiry or termination, or which is required to give effect to such expiry or termination. Without prejudice to the foregoing, clauses 2.2, 4.1, 7, 8, 9, 13, 15, 16, 17, 20 and 21 shall survive expiry or termination.
- 13.4 Either party may terminate the Contract with immediate effect by giving prior written notice to the other party if a Force Majeure Event prevents the non-terminating party from performing its obligations under the Contract for a period of longer than thirty (30) days.
- 13.5 The Buyer may terminate the Contract in whole or in part with immediate effect by giving written notice to the Supplier if:
- 13.5.1 the Supplier commits a material breach of any terms of the Contract and, where the breach is capable of remedy, the Supplier fails to remedy the breach within 14 days of receiving written notice from the Buyer requiring it to do so; or

- 13.5.2 the Supplier commits a series of persistent or minor breaches which, when taken together, are regarded by the Buyer as equivalent to a material breach; or
 - 13.5.3 association with the Supplier is likely to or may, in the opinion of the Buyer, damage the business and/or reputation of the Buyer and/or the Buyer Group; or
 - 13.5.4 the Supplier is affected by an insolvency event, which means one or more of the following events: (i) an administrator, administrative receiver, receiver or manager, liquidator or similar officer is appointed in respect of the whole or any part of the Supplier's assets and/or a winding up petition is issued against the Supplier; or (ii) the Supplier proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors; or (iii) any event or proceeding with respect to the Supplier that has an effect equivalent or similar to any of the foregoing ("**Insolvency Event**"); or
 - 13.5.5 the Supplier undergoes a change in Control.
- 13.6 The Buyer will be entitled to terminate the Contract in whole or in part (including any PO) at any time and without reason, by giving not less than 14 days' written notice to the Supplier.

14 Buyer Rights and Remedies

- 14.1 In addition and without prejudice to any other rights or remedies available to the Buyer if any Goods and/or Services are not supplied in accordance with the Contract or if the Supplier fails to comply with any term of the Contract, whether or not the Goods and/or Services have been accepted by the Buyer, the Buyer may:
- 14.1.1 reject the Goods and/or Services in whole or part, in which case a full refund for the Goods and/or Services so rejected will be made to the Buyer by the Supplier and such rejected Goods and/or Services will be removed from the Buyer Premises within 2 days of receipt of a written request to remove the same. Notwithstanding clause 6, rejected Goods remain at the Supplier's risk. In the event of such rejected Goods not being removed as required above, the Buyer may arrange for such removal at the cost of the Supplier; or
 - 14.1.2 require the Supplier, at the Supplier's expense, to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services in accordance with the Contract; or
 - 14.1.3 refuse to accept any further provision of Goods and/or Services; or
 - 14.1.4 obtain Goods and/or Services from a third party, the Supplier being responsible for any cost above that at which the Supplier would have supplied the Goods and/or Services; and/or
 - 14.1.5 claim damages.

15 Indemnity and Insurance

- 15.1 The Supplier will indemnify, keep indemnified and hold harmless the Buyer and all members of the Buyer Group (each an Indemnified Party) from any and all claims, losses, costs, damages, expenses, and proceedings including legal and professional fees and expenses ("**Losses**") made against, incurred or suffered by any of them, and whether wholly or in part resulting directly or indirectly from, or connected in any way with any of the matters listed below whether or not such Losses were foreseeable at the date of entering this Contract:
- 15.1.1 any alleged or actual infringement by an Indemnified Party of any IPR or any third party as a result of the Buyer's (or the relevant Indemnified Party's) receipt of the Services or use of any Goods or IPR provided or otherwise made available to any Indemnified Party by the Supplier; and/or
 - 15.1.2 any breach by the Supplier of its obligations under this Contract in relation to Confidential Information;
 - 15.1.3 any fraudulent or dishonest act or omission by the Supplier, any of its employees, agents or contractors;
 - 15.1.4 any death or personal injury arising from the act or omission of the Supplier, any of its employees, agents or contractors;
 - 15.1.5 any claim brought by a third party against any member of the Buyer Group to the extent that such claim is, or is alleged to be, caused by or based on any default, act or omission of the Supplier, any of its employees, agents or contractors;
 - 15.1.6 any Losses suffered by the Buyer Group as a result of the Buyer Group recalling a product (whether voluntarily or involuntarily) where such product comprises of or contains any Goods which have been produced and/or supplied by the Supplier.
- 15.2 The Supplier will provide all reasonable assistance to the Buyer and/or its insurers for the purposes of dealing with any action, claim or matter to which clause 15.1 applies.

- 15.3 The Supplier will, at all times, carry adequate insurance cover with a reputable insurer in respect of all risks for which it is prudent for the Supplier to insure against, having regard to the Supplier's possible liability to the Buyer. The Supplier will, on written request, supply a copy of the policy and premium receipt to the Buyer.

16 Liability

- 16.1 Nothing in this Contract limits or excludes the liability of either party (i) in respect of any deceit, theft, fraud or fraudulent misrepresentation by it or its employees, and in the case of Supplier, by any of the Supplier's employees, agents, officers, contractors or sub-contractors; (ii) for death or personal injury caused by its negligence; (iii) under clause 15 (Indemnity and Insurance); (iv) for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (v) to the extent such limitation or exclusion is not permitted by law.
- 16.2 Subject to clause 16.1, the Buyer will not be liable to the Supplier for (i) any consequential or indirect loss or damage; or (ii) any loss of profits, in each case whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 16.3 Subject to clause 16.1, the total aggregate liability of the Buyer and each other member of the Buyer Group to the Supplier (in addition to payment of any amounts properly due) under or in connection with this Contract whether in contract, tort (including negligence) or otherwise howsoever, will in no event exceed the aggregate amount which the Buyer is obliged to pay the Supplier hereunder (excluding any amounts that are not quantifiable at the Effective Date) for the relevant Goods and/or Services.
- 16.4 The total aggregate liability of the Supplier to the Buyer and each other member of the Buyer Group under or in connection with this Contract, whether in contract, tort (including negligence) or otherwise howsoever arising:
- 16.4.1 for loss of or damage to the tangible, material property of the Buyer (and/or or any other member of the Buyer Group), will not exceed £10,000,000.00 (ten million pounds);
- 16.4.2 in respect of all other loss (other than that governed by clauses 16.1 and 16.4.1) will not exceed the amount which is twice the total price paid and payable for the relevant Goods and/or Services under this Contract.

17 Confidentiality

- 17.1 Each party (the **Receiving Party**) will treat and keep all Confidential Information (a) first disclosed to it by the other party, or (b) learnt, acquired or developed by the Receiving Party in connection with this Contract, secret and confidential, and will not, without the party's consent, disclose Confidential Information to any other person other than in accordance with this Contract.
- 17.2 The foregoing will not apply to the extent that (a) the Receiving Party needs to have or disclose Confidential Information of the other party to any Affiliate, subcontractor, agent or employee of the Receiving Party in order to fulfil its obligations, exercise its rights under this Contract or to receive the benefit of the Services, provided always that the Receiving Party will procure that such person to whom the information is disclosed keeps the Confidential Information secret and confidential; or (b) any Confidential Information of the Supplier is embodied in or otherwise incorporated into any Goods, or (c) any Confidential Information is in the public domain at the Effective Date, or at a later date comes into the public domain, where such Confidential Information has not come into the public domain through a breach of this Contract, or (d) any Confidential Information is required to be disclosed pursuant to any Relevant Law or regulatory authority. This provision shall survive termination of the Contract.

18 Force Majeure

- 18.1 Neither party shall have any liability or responsibility for failure to fulfil its obligations under the Contract to the other so long as and to the extent only that such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. The Buyer shall not be liable for any Charges for any Services if they are not performed by the Supplier as a consequence of a Force Majeure Event.
- 18.2 A party claiming benefit under this clause 18 shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event, notify the other party of the nature and extent of such Force Majeure Event and unless and until the Contract is terminated by reason of Force Majeure Event use all reasonable endeavours to remove any such cause and resume performance under the Contract as soon as feasible.

19 Assignment and Novation

- 19.1 The Buyer may assign, charge, transfer, subcontract or otherwise deal in any way with any of its rights or obligations under the Contract in whole or in part at any time and on more than one occasion to (a) any member of the Buyer Group by giving the Supplier written notice; or (b) to any third party with the consent of the Supplier, such consent not to be unreasonably withheld or delayed, save that no such consent shall be required on any sale, in whole or part, of the business to which the Contract relates.

19.2 The Supplier shall not assign, charge, transfer, sub-contract or otherwise deal with any of its rights or obligations under the Contract without prior written consent from the Buyer.

20 Compliance with Anti-bribery Laws

20.1 The Supplier shall not, and shall procure that its directors, employees, agents, representatives, contractors or sub-contractors shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, regulations and codes, including but not limited to the Bribery Act 2010 ("**Anti-bribery Laws**").

20.2 The Supplier shall have in place adequate procedures designed to prevent any person working for or engaged by the Supplier or any other third party in any way connected to this Agreement, from engaging in any activity, practice or conduct which would infringe any Anti-Bribery Laws.

20.3 Breach of this clause 20 shall entitle the Buyer to terminate this Agreement by written notice with immediate effect.

21 Data Protection

21.1 The Supplier shall at all times comply with relevant DP Legislation (including the data protection principles therein) regardless of the owner of such data or media upon which it is stored.

21.2 Upon written request from the Buyer at any time, whether during or after the term of the Contract, the Supplier shall take or refrain from taking any action in relation to Personal Data which the Buyer considers necessary or desirable to ensure the Buyer complies with DP Legislation.

21.3 The Supplier shall implement appropriate technical and organisational measures to safeguard Personal Data against unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of Personal Data, and only process Personal Data (a) for the purpose of providing Goods or Services (or both) to the Buyer; and (b) in accordance with the Buyer's instructions. The Supplier shall not process the Personal Data outside the UK without the prior written consent of the Buyer. The Supplier shall ensure that it has adequate security programmes and procedures in place to ensure that unauthorised persons do not have access to any equipment used to process such data or on which any relevant software or data is stored.

21.4 The Supplier shall promptly notify the Buyer if: (a) the subject of any Personal Data makes a written request to have access to Personal Data or any complaint or request relating to the Buyer's obligations under DP Legislation; or (b) it becomes aware of any loss, damage, destruction, or unauthorised processing or accidental disclosure of Personal Data.

22 General

22.1 **Notices:** Any notice given under the Contract shall be in writing in English served by hand, prepaid first class recorded delivery or first class registered post, marked for the attention of the Company Secretary (or in the absence of a Company Secretary, a Director of the party), and sent to the parties' registered address (or in the absence of a registered address the last known address). Notices served by hand shall be deemed to have been received immediately if during business hours, and at the start of the next business hour if not. Notices sent by recorded delivery or post shall be deemed to have been received the second business day after posting. For the avoidance of doubt, notice given under this Contract shall not be validly served if sent by email.

22.2 **Waiver:** A waiver of any right under the Contract is only effective if it is in writing and it shall apply only to the party to whom the waiver is addressed and the circumstances for which it is given.

22.3 **Cumulative Rights:** The rights and remedies of the parties in connection with the Contract are cumulative and, except as expressly stated in this Contract, are not exclusive of and may be exercised without prejudice to any other rights or remedies provided in the Contract, by law, equity or otherwise.

22.4 **Further Assurance:** Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of this Contract.

22.5 **No Partnership or agency:** Nothing in this Contract shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the Supplier and the Buyer and neither party shall have authority to act in the name of or bind the other in any way.

22.6 **Severability:** If any provision of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable then the remaining provisions shall remain in full force and effect.

22.7 **Entire Agreement:** The Contract constitutes the entire agreement and understanding of the parties and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

- 22.8 **Governing Law and Jurisdiction:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of England and Wales. The United Nations International Convention on the Sale of Goods shall not apply. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales to settle any claim or dispute that arises from or in connection with the Contract or its subject matter.
- 22.9 Any references to dates and periods of time shall be construed in accordance with the Gregorian calendar and the English version of the Contract shall take precedence over any translation of the same into a different language.