

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

1 DEFINITIONS AND INTERPRETATION

1.1 In the Contract the following expressions shall have the following meanings:

- “**Approvals**” has the meaning given in Clause 6.1;
- “**Authority**” any local, national, multinational, governmental or non governmental authority, statutory undertaking or public or regulatory body or body corporate (whether present or future and including the FSA in the United Kingdom) which has any jurisdiction, control or influence over the obligations of any party or the performance thereof or any decision, consent or licence of which is required in order for any of the parties to fulfil their obligations in accordance with and pursuant to the Contract;
- “**Business Day**” a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- “**Conditions**” these terms and conditions as amended from time to time in accordance with Clause 21.3;
- “**Contract**” the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions and formed in accordance with Clause 2.2;
- “**Customer**” Tulip Limited, a company registered in England and Wales with company number 00608077 and with its registered office at Seton House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA;
- “**Customer Equipment**” any equipment, including tools, systems, cabling or facilities, provided by the Customer or its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Goods or Services;
- “**Customer Materials**” all documents, information, items and materials in any form (and whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the supply of the Goods or Services (including any Goods Specification, recipes and spice mixtures);
- “**Customer Policies**” the Customer’s business policies and codes relating to (a) anti-bribery and anti-corruption; (b) anti-slavery and human trafficking; (c) corporate and social responsibility; (d) ethics; and (e) data and privacy, as supplied by the Customer to the Supplier or as otherwise made available on the Customer’s website at www.tulip.co.uk, as amended from time to time;
- “**Customer Premises**” any premises or sites owned by or under the control of the Customer from which or at which the Supplier is to provide the Services, as set out in the Order or otherwise as agreed by the parties from time to time;
- “**Deliverables**” all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form;
- “**Delivery Date**” the date(s) specified for delivery of the Goods, as set out in the Order;
- “**Delivery Location**” the address(es) for delivery of the Goods, as set out in the Order;
- “**Delivery Requirements**” any specific delivery requirements as set out in the Order;
- “**Downstream Products**” has the meaning given in Clause 12.1;
- “**EU Food Law**” Regulations (EC) (as amended) 178/2002, 852/2004, 853/2004, 854/2004, 589/2008, 716/2008, 1308/2013, 1999/74, 834/2007, 889/2008 and 1235/2008 and all other laws of the European Union relating to food and animal by products, including the production, packaging, labelling, advertising, handling, transport or storage of food and/or the mitigation, abatement, containment or prevention of Harm and/or the carrying out of remedial action, including product recalls, withdrawals and/or the provision of remedies in respect of Harm;
- “**FSA**” the Food Standards Agency and any replacement body or authority in the United Kingdom;
- “**Force Majeure Event**” an event or circumstance beyond a party’s reasonable control, including acts of God, fire, flood, earthquake, or other natural disaster; war, threat of or preparation for war, imposition of sanctions, embargo or similar; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination; extreme adverse weather conditions; collapse of building structures; interruption or failure of utility service; and labour disputes BUT EXCLUDING any breakdown of any system, plant or machinery belonging to any party to the Contract and/or to any sub-contractor and/or agent of any such party, any strike or industrial action of such party’s staff and/or any shortage of materials or supplies;
- “**Goods**” any goods to be supplied by the Supplier pursuant to the Contract (or any part of them), as referred to in the Order;
- “**Goods Specification**” any specification for the Goods, as agreed between the Customer and the Supplier and as varied in accordance with Clause 3.2;
- “**Group**” in relation to a company, that company and 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;
- “**Harm**” death, personal injury, illness, harm, damage to or other interference with a person including offence caused to any of the senses;
- “**Incident**” any event where, based on the information available, there are concerns about actual or suspected threats to the safety or quality of food that could require intervention to protect consumers’ interests;
- “**Intellectual Property Rights**” patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for,

and renewals or extensions of, 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;

“**Legal Requirements**” all applicable laws, statutes, regulations and codes from time to time in force whether regional, national or international, which apply to the provision of the Goods or Services (including any of the foregoing which relate to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and applicable UK Food Laws and EU Food Laws);

“**Order**” means an order for Goods and/or Services as set out in the Customer’s purchase order form or otherwise as submitted by the Customer to the Supplier;

“**Price**” the price for the Goods or Services as set out in the Order or as otherwise agreed between the Customer and the Supplier before submission of the Order;

“**Recall**” means a recall of Downstream Products from consumers as defined by the FSA;

“**Services**” the services to be supplied by the Supplier pursuant to the Contract (or any part of them), as referred to in the Order, including any ancillary services;

“**Services Commencement Date**” the date on which the Supplier is to commence provision of the Services, as set out in the Order;

“**Specific Requirements**” the specific requirements of the Customer (if any) relating to the Goods or Services, as set out in the Order;

“**Supplier**” the person or firm from whom the Customer purchases the Goods and/or Services, as set out in the Order;

“**Supplier Equipment**” any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its agents, subcontractors or consultants to the Customer and used directly or indirectly in the supply of the Goods or Services;

“**Supplier IPR**” Intellectual Property Rights owned or licensed to the Supplier prior to the date of the Contract or developed, generated or acquired by the Supplier during the term of the Contract but not specifically for the Customer in the performance of the Contract or provision of the Goods, Services or Deliverables;

“**TUPE**” the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

“**UK Food Laws**” any and all laws that are now in force in the UK whether civil, criminal or administrative which relate to the production, packaging, labelling, advertising, handling, transport or storage of food including animal by-products and/or the mitigation, abatement, containment or prevention of Harm and/or the carrying out of remedial action, including product recalls and/or the provision of remedies in respect of Harm including European Community or EU regulations, directives, decisions, and legally binding recommendations, statutes and subordinate legislation; regulations, orders and ordinances, permits, legally binding codes of practice, circulars and guidance notes, common law, local laws and bye-laws, judgments, notices, orders directions, instructions, authorisations or awards of any Authority (in each case having the force of law);

“**Withdrawal**” a withdrawal of Downstream Products as defined by the FSA.

1.2 In the Contract, the following rules of interpretation shall apply:

- 1.2.1 a reference to a clause shall be a reference to a clause in these Conditions;
- 1.2.2 clause headings shall not affect the interpretation of these Conditions;
- 1.2.3 a reference to a person includes a natural person or a corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.4 a reference to a party includes that party’s personal representatives, successors and permitted assigns;
- 1.2.5 words in the singular shall include the plural and vice versa;
- 1.2.6 a reference to one gender shall include a reference to all other genders;
- 1.2.7 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 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security or (b) its nominee;
- 1.2.8 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.9 a reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction;
- 1.2.10 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.11 a reference to writing or written includes emails.

2 BASIS OF THE CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of (a) the Supplier issuing a written acceptance of the Order or (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Customer may within 5 Business Days of placing the Order amend or cancel the Order by written notice to the Supplier. If the Customer amends or cancels the Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up to the date of receipt of the notice of amendment or cancellation, save that the Customer shall have no liability if the amendment or cancellation results from the Supplier's failure to comply with the terms of the Contract.
- 2.6 At the written request of the Customer, the Supplier shall supply the Goods or Services to any member of the Customer's Group, in which case the Supplier shall supply the Goods or Services to the relevant member of the Customer's Group as if it were providing the Goods or Services to the Customer. However, any such members of the Customer's Group are not parties to the Contract and the Contract shall remain between the Supplier and the Customer only. The Customer shall act on behalf of any such member of the Customer's Group in all communications with the Supplier, save where the Customer directs otherwise.
- 3 SUPPLY OF THE GOODS**
- 3.1 The Supplier shall ensure that the Goods:
- 3.1.1 correspond with:
- 3.1.1.1 their description;
- 3.1.1.2 any samples of the Goods previously approved by the Customer;
- 3.1.1.3 any applicable Goods Specification; and
- 3.1.1.4 if the Supplier has previously supplied goods to the Customer of the same type as the Goods which have been approved by the Customer ("Previously Approved Goods"), the Supplier shall ensure that the Goods correspond with the Previously Approved Goods, save that any such previous approval shall be without prejudice to the Customer's rights in respect of Goods that do not correspond to any applicable Goods Specification;
- 3.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- 3.1.3 (where applicable) are fit for human consumption and (if applicable) have not been contaminated by any ingredients not set out in the Goods Specification (and without limiting the foregoing, the Goods shall not contain any ingredients or substances which are not set out in the Goods Specification which may cause or are known to cause allergic reactions in humans or which are specified in the Legal Requirements as being required to be specified on the packaging of the Goods);
- 3.1.4 where they are manufactured products, are free from defects in design, material and workmanship and the Supplier shall ensure that that the process of manufacture will comply with all Legal Requirements and Specific Requirements and best manufacturing practices and standards applicable to the food industry affecting the manufacture, packing and labelling of the Goods; and
- 3.1.5 comply with all Legal Requirements and Specific Requirements.
- 3.2 The Customer reserves the right to vary or amend the Goods Specification on providing 5 Business Days' notice to the Supplier, including in order to comply with any Legal Requirements.
- 4 DELIVERY, TITLE AND RISK**
- 4.1 The Supplier shall:
- 4.1.1 ensure that:
- 4.1.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.1.2 each delivery is accompanied by a delivery note which shows the Customer's contract reference number, the type and quantity of Goods (including the product code of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier; and
- 4.1.2 before delivering the Goods, perform a visual and physical exit control of the Goods to ensure that they correspond to the Contract and the Order.
- 4.2 The Supplier shall deliver the Goods specified in the Order in accordance with the Delivery Requirements to the Delivery Location on the Delivery Date. Unless otherwise agreed, all such deliveries shall take place during the Customer's normal business hours.
- 4.3 Time shall be of the essence in respect of the delivery of the Goods.
- 4.4 Unless otherwise specified in the Delivery Requirements, delivery of the Goods is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5 If the Customer rejects the Goods, the Goods are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Customer may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Customer will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
- 4.6 Unless otherwise specified in the Delivery Requirements, the Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Customer to the remedies set out in Clause 7.
- 4.7 Title and risk in the Goods shall pass to the Customer in accordance with the Delivery Requirements or otherwise on completion of delivery.
- 5 SUPPLY OF THE SERVICES**
- 5.1 The Supplier shall provide the Services and any Deliverables in accordance with the Order from the Services Commencement Date.
- 5.2 In respect of the supply of the Services and any Deliverables, the Supplier shall:
- 5.2.1 ensure that the Services and any Deliverables will conform in all respects with the Contract and the Order and that any Deliverables shall be of satisfactory quality and fit for any purpose expressly or implicitly made known to the Supplier by the Customer, and in this respect the Customer relies on the Supplier's skill and judgement;
- 5.2.2 perform the Services with the highest level of care, skill and diligence in accordance with the best practice in both the Supplier's industry, profession or trade and (if applicable) in the food industry;
- 5.2.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and free from defects in workmanship, installation and design;
- 5.2.4 ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under the Contract;
- 5.2.5 The Supplier will ensure that the Services are provided in such a way that none of its employees are sufficiently assigned to the relevant Services such that they constitute an 'organised grouping essentially dedicated' to providing the Services within the meaning of TUPE and so may be deemed to transfer from the Supplier to the Customer or any replacement supplier. The Supplier agrees to redeploy any employees who are or are potentially assigned to the Services prior to the full or partial termination of the Services.
- 5.2.6 co-operate with the Customer in all matters relating to the Services and comply with the Customer's reasonable instructions from time to time;
- 5.2.7 not do or omit to do anything which may cause the Customer to lose any licences, permissions, authorisations, consents, permits and approvals that it holds for the purposes of conducting its business;
- 5.2.8 (if applicable) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's Premises from time to time;
- 5.2.9 comply with all Legal Requirements and Specific Requirements in relation to the provision of the Services and any Deliverables.
- 5.3 Time is of the essence in relation to any performance dates or milestones set out in the Order for the Supplier.
- 5.4 The Customer shall:
- 5.4.1 co-operate with the Supplier in all matters relating to the Services;
- 5.4.2 provide access to the Customer Premises and data and other facilities as set out in the Order or may reasonably be requested by the Supplier and agreed by the Customer in writing in advance, for the purposes of providing the Services and any Deliverables;
- 5.4.3 provide to the Supplier all Customer Materials and Customer Equipment required under the Order by the dates specified and in the manner prescribed in the Order.
- 5.5 A failure by the Customer to comply with its obligations under the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.
- 6 APPROVALS**
- 6.1 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents, permits and approvals that it needs to carry out its obligations under the Contract (whether statutory, contractual or otherwise) ("Approvals"), including those Approvals as required by the Specific Requirements and that it manufactures, packs and supplies the Goods and provides the Services and any Deliverables in accordance with such Approvals at all times.
- 6.2 The Supplier shall monitor its compliance with Clause 6.1 throughout the term of the Contract and shall notify the Customer immediately upon it becoming aware of:
- 6.2.1 any failure to comply with Clause 6.1 above; or
- 6.2.2 any breach of any Approvals or any such Approvals being withdrawn, revoked, terminated or otherwise ceasing to be valid,
- in each case whether before or after delivery of the Goods or the provision of the Services or Deliverables.

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

7 REMEDIES

- 7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date (or, in respect of the Services, by any applicable milestone date set out in the Order), the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- 7.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 7.1.3 to purchase substitute goods and/or services from a third party and to recover from the Supplier any costs incurred by the Customer in obtaining such substitute goods and/or services;
- 7.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- 7.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 7.2 If any Goods delivered to the Customer do not comply with the terms of the Contract then, without limiting any of its other rights or remedies, and whether or not it has accepted delivery of the Goods, the Customer may exercise any one or more of the following remedies:
- 7.2.1 to terminate the Order and (if applicable) any further Orders made under the Contract;
- 7.2.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 7.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 7.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 7.2.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- 7.2.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 7.3 These Conditions shall apply to any repaired or replacement Goods and/or substituted or remedial services supplied by the Supplier.
- 7.4 The Customer's express rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law, including such rights and remedies available to it under the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.
- 8 PRICE AND PAYMENT**
- 8.1 The Supplier shall pay the Price for the Goods and Services in accordance with this Clause 8.
- 8.2 Unless otherwise stated in the Order, the Price:
- 8.2.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 8.2.2 includes all other charges, costs and expenses directly or indirectly incurred in connection with the supply and performance of the Services and supply of the Goods.
- 8.3 The Supplier may invoice the Customer for the Price plus VAT at the prevailing rate (if applicable):
- 8.3.1 in respect of Goods, on or at any time after the completion of delivery of the Order, or as otherwise set out in the Order; or
- 8.3.2 in respect of Services at the intervals specified, or on the achievement of the project milestones indicated, in the Order or, if not so set out, on or at any time after the completion of the Services under the Order.
- 8.4 Subject to Clause 8.6 and unless otherwise stated in the Order, the Customer shall pay all undisputed sums within 60 days of receipt of the correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment shall not be of the essence of the Contract.
- 8.5 Subject to Clause 8.6, if a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above Lloyds Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 8.6 The Customer reserves the right to withhold an appropriate proportion of payment against any outstanding invoice if any Goods, Services or Deliverables have not been provided in accordance with the provisions of the Contract or are subject to a bona fide dispute in respect of compliance with the terms of the Contract.
- 8.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

9 CUSTOMER MATERIALS AND CUSTOMER EQUIPMENT

- The Supplier acknowledges that all Customer Materials and Customer Equipment and all rights in the Customer Materials (including any Intellectual Property Rights in the Customer Materials) are and shall remain the exclusive property of the Customer and the Supplier shall:
- 9.1 hold the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation; and
- 9.2 take good care of any Customer Equipment provided by the Customer.
- 10 INTELLECTUAL PROPERTY RIGHTS**
- 10.1 In relation to the Customer Materials:
- 10.1.1 the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- 10.1.2 the Customer grants (or, as applicable, shall procure that its licensors shall grant) to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Goods and Services to the Customer.
- 10.2 In relation to the Goods or Deliverables:
- 10.2.1 The Supplier and its licensors shall retain ownership of all Supplier IPR comprised in the Goods or Deliverables;
- 10.2.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any Supplier IPR comprised in the Goods or Deliverables for the purpose of receiving and using the Goods, the Services and the Deliverables in its business;
- 10.2.3 The Customer may sub-licence the rights granted in Clause 10.2.2 to its customers, suppliers and contractors and to any member of its Group;
- 10.2.4 any Intellectual Property Rights in the Goods or Deliverables (other than the Supplier IPR and the Customer Materials) ("**Developed IPR**") shall, at the Commencement Date or (if later) on creation of the rights in the Developed IPR, vest in the Customer. The Supplier assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights in the Developed IPR with full title guarantee to the Customer and the Supplier shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Customer may consider necessary or desirable to perfect the right, title and interest of the Customer in and to such Intellectual Property Rights; and
- 10.2.5 The Customer grants (or, as applicable, shall procure that its licensors shall grant) to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Developed IPR for the term of the Contract for the purpose of providing the Goods and Services to the Customer.
- 10.3 The Supplier:
- 10.3.1 save in respect of the Customer Materials, warrants that the receipt, use and onward supply of the Goods, the Services and the Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 10.3.2 shall keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods, the Services or the Deliverables (save to the extent such actual or alleged infringement relates to the Customer Materials).
- 11 AUDIT**
- 11.1 The Customer (or its representatives or agents) shall be entitled to inspect, test and audit ("**audit**"):
- 11.1.1 the Goods;
- 11.1.2 the Supplier's performance of the Services and any Deliverables;
- 11.1.3 any facilities of the Supplier used in the manufacturing, packaging or supply of the Goods or the provision or performance of the Services; and
- 11.1.4 any relevant documents, reports, policies and procedures of the Supplier, including (if applicable) all quality management and food safety policies, traceability programmes, risk analysis reports and hygiene control policies,
- at any time (whether before or after delivery of the Goods or the supply of the Services) upon the Customer giving the Supplier reasonable advance notice (or shorter notice in the event of potential Recalls or Withdrawals, FSA investigations or fraud).
- 11.2 The Supplier shall give the Customer (and its representatives and agents) all reasonable co-operation, access and assistance in relation to each audit and shall pay the Customer's reasonable costs (including time costs) incurred in carrying out the audit.
- 11.3 If following an audit the Customer considers that the Goods or the Services or any Deliverables do not conform or are unlikely to comply with the requirements of the Contract or the Supplier is otherwise in breach (or may be in breach) of the terms of the Contract, (without limiting its other remedies) the Customer shall inform the Supplier and the Supplier shall:

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

- 11.3.1 immediately take such remedial action at its own cost as is necessary to ensure compliance; and
- 11.3.2 provide to the Customer such evidence as the Customer shall reasonably require to show that such non-conformance has been remedied.
- 11.4 Notwithstanding any such audit, the Supplier shall remain fully responsible for the Goods and Services and any such audit shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further audits after the Supplier has carried out its remedial actions.
- 11.5 In the event that the Supplier or its facilities are subject to any third party audit, including by any Authority or in relation to any Approvals, the Supplier shall promptly provide the Customer with details of the outcome (including any non-conformances) of any such third party audit and, if applicable, provide a copy of any audit report arising from such third party audit.
- 12 PRODUCT RECALLS AND WITHDRAWALS**
- 12.1 If either party becomes aware or has reason to believe at any time that any Goods or Deliverables or any other goods or products which incorporate or are affected by the Goods, Services or the Deliverables (together "**Downstream Products**") which remain in any stage of the supply chain or which have been purchased or are otherwise in the possession of any consumer cause or may cause Harm or an Incident and/or otherwise do not or may not comply with any of the terms of the Contract and/or any Legal Requirement (together the "**non-compliance**"), it shall promptly notify the other party of such non-compliance with all relevant information relating thereto.
- 12.2 Following such notification, the parties shall consult immediately on the nature of the non-compliance and the Supplier shall provide all necessary and prompt assistance to the Customer and/or any relevant regulatory authority to assess the nature, extent and cause of the non-compliance.
- 12.3 Following the consultation in Clause 12.2, the Customer may in its sole discretion:
- 12.3.1 decide that there is no non-compliance issue and no further action need be taken; or
- 12.3.2 decide that there is or may be a non-compliance issue and that there are reasonable grounds to undertake a Recall or Withdrawal of the Downstream Products on the terms of Clause 12.4; or
- 12.3.3 decide that there is or may be a non-compliance issue but (without prejudice to the Customer's other potential rights and remedies under the Contract and its right to later decide to undertake a Recall or Withdrawal of the Downstream Products on the terms of Clause 12.4) decide not to Recall or Withdraw the Downstream Products in which case the parties shall continue to investigate the nature, extent and source of the non-compliance and the Supplier shall keep the Customer updated with all its material findings as and when they are made and upon request by the Customer provide copies of any and all preliminary findings or raw data produced or procured in the course of its investigations.
- 12.4 If the Customer decides to Recall or Withdraw Downstream Products pursuant to Clause 12.3, the parties shall do the following:
- 12.4.1 the Customer shall, in its absolute discretion:
- 12.4.1.1 Recall the relevant Downstream Products and take full conduct of the Recall including issuing (or any relevant Authority may issue) a notice to all relevant parties ("**Recall Notice**") or Withdraw the affected Downstream Products and take full conduct of the Withdrawal including issuing (or any relevant Authority may issue) a notice to all relevant parties ("**Withdrawal Notice**");
- 12.4.1.2 take full conduct of and handle all announcements, notifications, communications and relations with the media, wholesalers, retailers, any relevant regulatory authority, consumers and any other interested parties in respect of the Recall or Withdrawal; and
- 12.4.1.3 take such other action as the Customer may decide including returning any affected Goods or Deliverables to the Supplier.
- 12.4.2 the Supplier shall:
- 12.4.2.1 assist in the Recall or Withdrawal of the Downstream Products at the direction of the Customer;
- 12.4.2.2 promptly conduct a full investigation of the nature, extent and source of the non-compliance. The Supplier shall keep the Customer updated with all its material findings as and when they are made and upon request by the Customer provide copies of any and all preliminary findings or raw data produced or procured in the course of its investigations. The Supplier shall provide a full written report to the Customer as soon as possible and in any event within 7 days of issue of the Recall Notice or Withdrawal Notice;
- 12.4.2.3 permit the Customer and its agents and representatives access to its sites and facilities to enable the Customer to undertake its own investigations;
- 12.4.2.4 not make any announcement, communication or deal with the media, any relevant regulatory authority, consumers, wholesalers, retailers or any other interested parties without the prior consent of the Customer; and
- 12.4.2.5 provide all other necessary and prompt assistance to the Customer and its agents and representatives in respect of the Recall or Withdrawal.
- 13 INDEMNITY**
- 13.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with a breach by the Supplier of this Clause 15.
- 13.1.1 any claim made against the Customer by a third party for Harm, or damage to property arising out of or in connection with defects in the Goods, the Services or Deliverables (or any Downstream Products), to the extent that the defects in the Goods, the Services or Deliverables or Downstream Products (as applicable) are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 13.1.2 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, the Services or Deliverables (or any Downstream Products), to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
- 13.1.3 any Recall or Withdrawal of any Goods or Deliverables (or any Downstream Products), to the extent that the Recall or Withdrawal are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 13.2 This Clause 13 shall survive termination of the Contract.
- 14 INSURANCE**
- 14.1 During the term of the Contract and for a period of one year thereafter, the Supplier shall maintain in force, with a reputable insurance company, the following insurances to cover the liabilities that may arise under or in connection with the Contract:
- 14.1.1 product liability insurance for not less than £5,000,000 for claims arising from any single event and not less than £5,000,000 in aggregate for all claims arising in a year;
- 14.1.2 professional indemnity insurance for not less than £5,000,000 for claims arising from any single event and not less than £5,000,000 in aggregate for all claims arising in a year;
- 14.1.3 product recall insurance for not less than £5,000,000 per claim; and
- 14.1.4 public liability insurance for not less than £5,000,000 per claim.
- 14.2 The Supplier shall ensure that the Customer's interest is noted on each insurance policy referred to above or that a generic interest clause has been included.
- 14.3 The Supplier shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 15 COMPLIANCE WITH RELEVANT LAWS AND POLICIES**
- 15.1 In performing its obligations under the Contract, the Supplier shall:
- 15.1.1 comply with all Legal Requirements; and
- 15.1.2 comply with the Customer Policies.
- 15.2 Without limiting the foregoing, in performing its obligations under the Contract, the Supplier shall:
- 15.2.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
- 15.2.2 comply with the Customer's anti-slavery policy as amended by notification to the Supplier from time to time ("**Anti-slavery Policy**");
- 15.2.3 ensure that each of its subcontractors and suppliers shall comply with the Anti-slavery Policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
- 15.2.4 notify the Customer as soon as it becomes aware of:
- 15.2.4.1 any breach, or potential breach, of the Anti-slavery Policy; or
- 15.2.4.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.
- 15.2.5 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Customer in connection with the Contract;
- 15.2.6 implement a system of training for its employees, suppliers and subcontractors to ensure compliance with the Anti-slavery Policy and keep a record of all such training completed; and
- 15.2.7 otherwise fully co-operate with the Customer in all matters relating to anti-slavery and human trafficking, including providing the Customer with copies of all relevant documents, reports and policies in the possession of the Supplier in relation thereto.
- 15.3 The Supplier represents and warrants that neither the Supplier nor any of its officers, employees or other persons associated with it:
- 15.3.1 has been convicted of any offence involving slavery and human trafficking; and
- 15.3.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 15.4 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with a breach by the Supplier of this Clause 15.

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

- 15.5 The Customer may immediately terminate the Contract for any breach of this Clause 15 by the Supplier.
- 16 **DATA PROTECTION**
- 16.1 In this Clause 16:
- 16.1.1 the terms “**Data Controller**”, “**processing**” and “**process**” have the meaning set out in section 1(1) of the Data Protection Act 1998;
- 16.1.2 the term “**Data Subject**” means an individual who is the subject of Personal Data; and
- 16.1.3 the term “**Personal Data**” has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, of which the Customer is the Data Controller and in relation to which the Supplier is providing Services under the Contract.
- 16.2 The Supplier shall:
- 16.2.1 process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of providing the Services and in accordance with the Customer’s instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out on behalf of the Customer;
- 16.2.2 promptly comply with any request from the Customer requiring the Supplier to amend, transfer or delete the Personal Data;
- 16.2.3 provide, at the Customer’s request, a copy of all Personal Data held by it in the format and on the media reasonably specified by the Customer;
- 16.2.4 not transfer the Personal Data outside the European Economic Area without the prior written consent of the Customer; and
- 16.2.5 promptly inform the Customer if it becomes aware of any unauthorised or unlawful processing or if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.
- 16.3 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party’s compliance with the Data Protection Act 1998 and the data protection principles set out in the Contract, it shall immediately notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.
- 16.4 The Supplier shall ensure:
- 16.4.1 that it takes reasonable steps to ensure the reliability of any of the Supplier’s employees who have access to the Personal Data;
- 16.4.2 that access to the Personal Data is limited to:
- 16.4.2.1 those employees who need access to the Personal Data to meet the Supplier’s obligations under the Contract; and
- 16.4.2.2 in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee’s duties,
- 16.4.3 that all of its employees involved with the Services:
- 16.4.3.1 are informed of the confidential nature of the Personal Data;
- 16.4.3.2 have undertaken training in the laws relating to handling personal data; and
- 16.4.3.3 are aware both of the Supplier’s duties and their personal duties and obligations under such laws and the Contract.
- 16.5 If the Supplier receives a request from a Data Subject for access to that person’s Personal Data, the Supplier shall notify the Customer within 2 Business Days of receiving such a request and shall:
- 16.5.1 provide the Customer with full co-operation and assistance in relation to any such request; and
- 16.5.2 not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in the Contract.
- 16.6 The Supplier warrants that:
- 16.6.1 it will process the Personal Data in compliance with all Legal Requirements; and
- 16.6.2 it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure the Customer’s compliance with the seventh data protection principle.
- 16.7 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Clause 16.
- 17 **TERMINATION**
- 17.1 Without limiting its other rights or remedies, the Customer may terminate the Contract for convenience by giving the Supplier not less than 20 Business Days’ written notice.
- 17.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
- 17.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 17.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 17.2.4 the other party’s financial position deteriorates to such an extent that in the terminating party’s opinion the other party’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 18 **CONSEQUENCES OF TERMINATION**
- 18.1 On termination or expiry of the Contract for any reason:
- 18.1.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials and Customer Equipment. If the Supplier fails to do so then the Customer (or its agents or representatives) may enter the Supplier’s premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- 18.1.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the supply of the Goods or the Services to the Customer or any replacement supplier appointed by it;
- 18.1.3 the Supplier shall comply with its obligations under TUPE (if applicable) and the Supplier agrees and undertakes to indemnify and hold the Customer and any replacement supplier appointed by it harmless against all liabilities, costs, expenses, damages and losses arising from or in connection with:
- 18.1.3.1 any act or omission of the Supplier in relation to its employment of any employee or worker of the Supplier which has occurred during or after the termination of the Contract, liability for which is deemed to transfer to the Customer or any replacement supplier appointed by it by virtue of the operation of TUPE;
- 18.1.3.2 the actual or deemed transfer of any employee or worker of the Supplier to the Customer or any replacement supplier appointed by it as a result of the operation, or alleged operation, of TUPE on termination of the Contract;
- 18.1.3.3 any breach by the Supplier of its obligations under TUPE either during or upon termination of the Contract;
- 18.1.3.4 any breach by the Supplier of its obligations under clause 5.2.5.
- 18.2 Any provision of the Contract that is expressly or by implication intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 18.3 Termination or expiry of the Contract shall not affect any of the parties’ rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 19 **ANNOUNCEMENTS AND CONFIDENTIALITY**
- 19.1 The Supplier shall not make any press or other public announcement concerning any aspect of the Contract, or make any use of the Customer’s name in connection with or consequence of the Contract, without the prior written consent of the Customer.
- 19.2 The Supplier undertakes:
- 19.2.1 to maintain as secret and confidential all know-how and all other technical, commercial or other confidential information concerning the business, affairs, customers, clients or suppliers of the Customer (“**Confidential Information**”) obtained directly or indirectly from the Customer in the course of or in anticipation of the Contract and to respect the Customer’s rights therein;
- 19.2.2 to use the same solely and exclusively for the purposes set out in the Contract; and
- 19.2.3 not to disclose the same other than only to those of its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Supplier’s rights or carrying out its obligations under or in connection with the Contract.
- 19.3 The provisions of Clause 19.2 shall not apply to Confidential Information which:
- 19.3.1 is required to be disclosed by the Supplier by law or by the courts of any competent jurisdiction, or by any regulatory agency or financial authority, provided that the Supplier shall (to the extent it is legally able to do so) provide the Customer with as much advance notice as possible; or
- 19.3.2 was, prior to its receipt by the Supplier from the Customer, in the possession of the Supplier and at its free disposal; or
- 19.3.3 is subsequently disclosed to the Supplier without any obligations of confidence by a third party who has not derived it directly or indirectly from the Customer; or
- 19.3.4 is or becomes generally available to the public through no act or default of the Supplier or its agents, employees, affiliates or sub-licensees.
- 19.4 The Supplier shall procure that all of its employees and sub-contractors (if any) who have access to any of the Customer’s Confidential Information shall be made aware of and subject to these obligations and shall have entered into written undertakings of confidentiality at least as restrictive as those set out in this Clause 19.

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

- 19.5 For the purposes of Clause 19.2.1, any Goods Specification shall be deemed to be the Confidential Information of the Customer.
- 20 BUSINESS CONTINUITY AND FORCE MAJEURE**
- 20.1 During the term of the Contract, the Supplier shall maintain in place a comprehensive business continuity and disaster recovery plan which, when activated, is designed to allow the Supplier to continue provision of the critical elements of its obligations under the Contract (whether from the Supplier's own facilities or a business continuity and disaster recovery facility) within 24 hours of the incident causing the business continuity and disaster recovery plan to be put into effect and shall supply a copy of such plan to the Customer on request. If the Supplier is unable to supply the Services in accordance with the Contract because of a Force Majeure Event the Supplier shall, before it is able to rely on Clause 20.3, seek to prevent or mitigate the effect on the Force Majeure Event by complying with the terms of its business continuity and disaster recovery plan.
- 20.2 Any business continuity and disaster recovery plan that the Supplier has must accord with BCI (Business Continuity Institute) Good Practice Guidelines 2013 as amended from time to time. Where the business continuity and disaster recovery plan relies upon services to be provided by a third party business continuity and disaster recovery provider, such third party must be a reputable provider of business continuity and disaster recovery services.
- 20.3 Subject to the Supplier's compliance with Clauses 20.1 and 20.2, neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event, provided that the affected party gives written notice of such Force Majeure Event to the party not affected within 2 Business Days of the start of the Force Majeure Event, such notice to include details of the impact of the Force Majeure Event on the ability of the affected party to perform its obligations under the Contract and of any steps being taken to mitigate or remedy the effect of the Force Majeure Event. If the period of delay or non-performance continues for 1 week, the party not affected may terminate the Contract by giving 5 Business Days' written notice to the affected party.
- 21 MISCELLANEOUS PROVISIONS**
- 21.1 **Assignment and Subcontracting.** The Supplier shall not assign, transfer, mortgage, charge, subcontract, 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 Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 21.2 **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. The Contract applies to the exclusion of any other terms that the Supplier seeks to impose or incorporate.
- 21.3 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 21.4 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 21.4.1 waive that or any other right or remedy; or
- 21.4.2 prevent or restrict the further exercise of that or any other right or remedy.
- 21.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 21.6 **Notices.**
- 21.6.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 21.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 21.6.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 21.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 21.7 **Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 21.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 21.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).