

## GENERAL TERMS (SUPPLY OF GOODS & SERVICES)

### 1. INTERPRETATION

#### 1.1 In these General Terms, the following definitions apply:

**Affiliate** any entity that directly or indirectly Controls, is Controlled by or is under common Control with another entity;

**Benchmark Review** a review of goods and/or services equivalent to the quality and quantity of Goods and/or Services (including charges) which the Supplier provides, or is expected or anticipated to provide, to the Customer;

**Commercial Terms** any written agreement between the Customer and the Supplier incorporating these General Terms which apply to the supply of Goods and/or Services;

**Contract** the agreement between the Customer and the Supplier (as detailed in the Purchase Order) for the supply of Goods and/or Services in accordance with these General Terms and the Special Terms (if applicable);

**Control** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of a company;

**Customer** the company which places a Purchase Order with the Supplier being Pilgrim's Food Masters Ireland Limited or any Affiliate of the company;

**Customer Materials** all materials, documents, information, items, recipes, plans, processes, equipment, tools, drawings, specifications and data supplied by the Customer to the Supplier;

**Pilgrim's Supply** the procurement portal as may be indicated by the Customer to the Supplier from time to time.

**Data Protection Legislation** all applicable legislation and other regulatory requirements in force from time to time in the UK and the European Union relating to data protection including but not limited to the GDPR, the Data Protection Act 2018 and the ePrivacy Regulations 2011, and the guidance and codes of practice issued by the relevant data protection regulatory authority and applicable to a party;

**Deliverables** all documents, products and materials developed by the Supplier or its manufacturer's, agents, contractors and/or employees as part of or in relation to the Goods and/or Services in any form or media;

**Force Majeure Event** an event or circumstances beyond the reasonable control of a party, including an act of God, war, terrorist attack, riot, civil commotion, compliance with any law or governmental order, fire, flood or other exceptional adverse weather condition for which the relevant party is not nor could not be expected to anticipate;

**General Terms** these terms and conditions as amended from time to time in accordance with clause 17.9;

**Best Value** cost and non-cost factors which deliver the greatest overall benefit to meet the Customer's requirements;

**GDPR** the General Data Protection Regulation (EU) 2016/679;

**Goods** the products (or any part of them) as set out in the Commercial Terms or the Purchase Order;

**Goods Specification** any description for the Goods, including any related recipes, plans and drawings, that is agreed in writing by the Customer and the Supplier;

**Intellectual Property Rights** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, recipes, plans, processes, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Mandatory Policies** the Customer's business policies and codes to include the Supplier Code of Conduct, Anti-Bribery and Corruption Policy, Conflict of Interest Policy, Competition Law Compliance Policy, Data Protection Policy, Anti-Facilitation of Tax Evasion Policy, Modern Slavery Policy, Ethical and Human Rights Policy, Employee Code of Conduct and Ethics Policy and which may be updated from time to time and are available on request from the Customer;

**Purchase Order** the Customer's order, as set out on the Customer's standard purchase order form, for the supply of Goods and/or Services by the Supplier and its schedule, if any;

**Services** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Commercial Terms or the Services Specification;

**Service Specification** the description or specification as agreed in writing by the Customer and the Supplier;

**Special Terms** any variation to these General Terms as noted on the Purchase Order to apply to the Contract between the Supplier and the Customer;

**Supplier or you or your** the person or firm (including its Affiliates) from whom the Customer purchases the Goods and/or Services;

**TUPE** the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

1.2 (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) references to a party includes its successors or permitted assigns; (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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; (d) to the extent that any statute referenced in the Contract does not apply in the Supplier's local jurisdiction, such a reference shall be construed to be a reference to the equivalent law or statute in the Supplier's local jurisdiction provided that the Customer's position will be no more detrimental than as under the statute specified in the Contract; (e) 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; and (f) a reference to **writing** or **written** includes faxes and e-mails.

### 2. BASIS OF CONTRACT

2.1 A Contract shall come into effect whenever you return a written acceptance of the Purchase Order or carry out any act consistent with fulfilling the Purchase Order.

2.2 The Customer may withdraw or amend a Purchase Order by written notice to the Supplier at any time. 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 of the amendment or cancellation results from the Supplier's failure to comply with the terms of the Contract.

2.3 Unless expressly stated otherwise in the Contract, the Customer may submit forecasts of its estimated requirements for the Goods and/or Services. Any forecast provided is an estimate only and

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shall not constitute a Purchase Order and shall not be binding on the parties.

**2.4** The Customer only enters into Contracts on the basis of these General Terms, which apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.5** These General Terms are intended to cover the purchase of Goods, Services or both. If a Supplier is supplying only Goods and no ancillary Services, then by default clauses relating only to Services shall be deemed not to apply and vice versa.

**2.6** The Contract incorporates the Mandatory Policies, which you must comply with at all times. You must maintain, as a minimum, the levels of insurance, accreditations and compliance with the Mandatory Policies and codes you confirmed on registration with the Customer and notify the Customer of any material changes to the information you provided on registration as soon as reasonably practicable and in any event no later than 2 working days.

**2.7** For the avoidance of doubt, these General Terms incorporate the Special Terms (if any) and in the event of any conflict between any terms of any of the documents constituting the Contract, precedence shall be given to the document that is higher in the following hierarchy:

- the Special Terms;
- the General Terms;
- the Commercial Terms;
- the Purchase Order, to include any schedules thereto;
- the Mandatory Policies; and
- any other document incorporated into the Contract.

**2.8** Any Affiliate of the Customer may enter into a Contract, in which case the Contract shall be between that Affiliate and the Supplier only and shall incorporate these General Terms.

### **3. TERMS RELATING TO GOODS**

**3.1** You undertake and warrant the Goods: (a) correspond with any sample and applicable Goods Specification; (b) be of merchantable quality (within the meaning of the Sale of Goods and Supply of Services Act 1980) and are 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 expertise, skill and judgment; (c) are free from defects in design, materials and workmanship; (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; (e) ensure (where applicable) that transported Goods are being maintained at correct temperature levels and that such goods are checked at regular intervals; (f) comply with any other obligations set out in the Purchase Order; and (g) are accompanied by the relevant Deliverables.

**3.2** The warranties set out in clause 3.1 shall apply for six months from the date of delivery or from any later date on which the Goods are actually delivered.

**3.3** You must at all times have and maintain all licences, permissions, authorisations, consents and permits ("Approvals") needed to carry out your obligations under the Contract and that you manufacture, pack and supply the Goods and provide the Services

and/or any Deliverables in accordance with the Approvals at all times.

**3.4** You must at all times maintain sufficient manufacturing capacity, stocks of raw materials and packaging and Goods (as applicable) to enable you to meet the Customer's forecasted requirements as may be notified to you in accordance with clause 2.3.

**3.5** Without prejudice to any acceptance criteria in the Contract, the Customer shall have the right to inspect and test the Goods at any time before delivery and if it considers that the Goods do not conform or are unlikely to comply with the undertakings at clause 3.1, the Customer shall inform you and you shall immediately take all such remedial action as is necessary to ensure compliance and the Customer shall have the right to conduct further inspections and tests (at the Supplier's expense) after the Supplier has carried out its remedial actions. You shall remain fully responsible for the Goods, regardless of any inspection or testing, and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

**3.6** The Goods must be properly packed and secured in accordance with any packaging requirements notified to you by the Customer or, if none, in such manner as to enable them to reach their destination in good condition. Each delivery of the Goods must be accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, the type and quantity of the Goods (including the code number 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. If you require the Customer to return any packaging material for the Goods, that must be clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

**3.7** You must deliver the Goods: (a) on the date specified in the Contract or the date otherwise specified by the Customer. Unless otherwise expressly agreed in writing by the parties, time for delivery of the Goods shall be of the essence; (b) to such location as is set out in the Purchase Order or as otherwise instructed by the Customer before delivery (or, if neither are specified, to the Customer's registered address) (**Delivery Location**); and (c) unless otherwise specified by the Customer, during the Customer's normal hours of business.

**3.8** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. The Customer is not required to carry out any incoming inspections of the Goods, and the Customer may in all respects rely on the Supplier's quality control systems. Any inspection or audit carried out by the Customer shall not release the Supplier from, or otherwise affect, any obligation of the Supplier. For the avoidance of doubt, confirmation of receipt of delivery of Goods by any person for or on behalf of the Customer shall not constitute acceptance of the Goods.

**3.9** If you deliver less or more than the quantity of Goods ordered, the Customer may reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If you deliver more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

**3.10** You shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the

Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall (without prejudice to any other right or remedy available to the Customer) entitle the Customer to the remedies set out in clause 5.

**3.11** Title and risk in the Goods shall pass to the Customer upon delivery.

#### **4. TERMS RELATING TO SERVICES**

**4.1** You must: (a) provide the Services and any Deliverables to the Customer in accordance with the terms of the Contract; and (b) meet any performance dates for the Services specified in the Contract or notified to you by the Customer and, unless otherwise expressly agreed in writing by the parties, time shall be of the essence in relation to any of those performance dates.

**4.2** In providing the Services, you must: (a) co-operate with the Customer on all matters relating to the Services, and comply with all reasonable and lawful instructions of the Customer; (b) perform the Services with all due skill and diligence in accordance with best practice in your industry, profession or trade; (c) use personnel who are suitably qualified, skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that your obligations are fulfilled in accordance with the Contract; (d) ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables be of satisfactory quality and be fit for any purpose made known to the Supplier by the Customer, expressly or by implication; (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services; (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design; (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws, codes and regulations; (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; (i) hold all Customer Materials in safe custody at its own risk, maintain Customer Materials in good condition until returned to the Customer, and not dispose or use Customer Materials other than in accordance with the Customer's written instructions or authorisation; (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; (k) fully comply with the requirements of clause 8 (Audit).

#### **5. CUSTOMER'S REMEDIES**

**5.1** Without prejudice to the Customer's rights under clause 12, if (i) you are late in delivering the Goods or performing the Services; (ii) delivered Goods that do not comply with the undertakings set out in clause 3.1; or (iii) performed Services that do not comply with the undertakings set out in clause 4.2; the Customer shall (without limiting its other rights or remedies) have the right to exercise one or more of the following rights (as appropriate):  
(a) to extend the applicable date;  
(b) to suspend or postpone any future delivery of Goods or performance of Services (including suspension of the

requirement to pay for any such Goods or Services until such delivery or performance as agreed is resumed);

(c) to require you to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

(d) to claim damages for any additional costs, loss or expenses payable by the Customer which are in any way attributable to your failure to meet any date, supply Goods in accordance with clause 3.1 or perform the Services in accordance with clause 4.1 (including, without limitation, any liquidated or other damages payable by the Customer to its customer(s));

(e) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded in full by you;

(f) to recover from you any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;

(g) to reject the Goods (in whole or in part) whether or not title has passed and to return them to you at your own risk and expense;

(h) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which you attempt to make; and/or

(i) to terminate the Contract with immediate effect by giving written notice to you.

**5.2** These General Terms extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.

**5.3** The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

#### **6. CHARGES & PAYMENT**

**6.1** The Customer shall only be required to pay for Goods and Services for which an associated Purchase Order has been agreed. Any payment which the Customer is required to make shall only be made by way of BACS transfer to a UK or EU bank account.

**6.2** The price for the Goods: (a) shall be the price set out in the Purchase Order or the price otherwise agreed in writing by the parties; and (b) shall be inclusive of all charges, duties, levies, tariffs, expenses, costs (including costs of packaging), insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing by the Customer.

**6.3** The charges for the Services shall be set out in the Purchase Order and shall be the full and exclusive payment to the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

**6.4** Unless specified otherwise in the Purchase Order: (a) in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery or as otherwise set out in the Commercial Terms; and (b) in respect of Services, the Supplier shall invoice the Customer on completion of the Services or as otherwise set out in the Commercial Terms.

**6.5** Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including without limitation:

(a) The name and address of the Supplier and the Customer;

- (b) The currency;
- (c) the VAT number of the Supplier and the Customer;
- (d) the VAT base amount, the rate and amount on each line item and total VAT amount;
- (e) the delivery address;
- (f) the Purchase Order number;
- (g) the Customer's position number from the Purchase Order or the Customer's item number, the Supplier's item number or the EAN number;
- (h) the invoice number and date;
- (i) the material number, commodity code, number of units and weight of the Goods; and
- (j) bank account details of the Supplier.

Invoices, invoice queries and statements should be submitted via email to the Customer's nominated email address as notified to the Supplier from time to time. The Supplier must submit each invoice as a separate pdf attachment to the nominated email address, a pdf containing more than one invoice will be automatically rejected and not processed for payment.

- 6.6** The Customer shall reject payment of invoices that do not comply with the requirements of clause 6.5. For the avoidance of doubt the Supplier may reissue the invoice so as to comply with the requirements of clause 6.5, provided the errant invoice has been removed or a credit note raised so as to show the correct position in respect of the sums due from the Customer.
- 6.7** In consideration of the supply of Goods and/or Services by the Supplier, unless otherwise specified in the Purchase Order or the Commercial Terms, the Customer shall pay any undisputed invoiced amounts in the Customer's next weekly payment run following 60 days from the date of the correctly rendered invoice or the date the Goods are received by the Customer (whichever occurs later) to a bank account nominated in writing by the Supplier.
- 6.8** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (VAT) chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 6.9** If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the base rate for the time being of the Central Bank of Ireland accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.
- 6.10** 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.

- 6.11** Where payment is outstanding, the Supplier shall have no right to suspend subsequent performance of the Services and/or delivery of the Goods in the event that a payment is disputed in good faith by the Customer and a Dispute Notice has been served in accordance with clause 17.11. In this case the parties shall look to resolve any Dispute as set out by clause 17.11 as soon as reasonably practicable and where possible within 10 business days. In the event that payment is late for any other reason, the Supplier shall not suspend supply of the Goods and/or performance of Services without giving at least 10 business days prior written notice that it intends to do so.

## 7. BENCHMARK REVIEWS

The Parties recognise the importance of maintaining the baseline (**Initial Commercial Baseline**) of providing Best Value to the Customer as at the date of Contract. The Customer may (acting reasonably but not more than annually), carry out a Benchmark Review of any or all of Goods and/or Services (including any charges under the Contract) and will give the Supplier written notice that such a review is being carried out. If in the Customer's reasonable opinion, such a Benchmark Review identifies that the Goods and/or Services do not represent Best Value, the Customer shall inform the Supplier of completion of the Benchmark Review and may provide the (anonymised) results of the review. To that end, the parties will, as soon as reasonably possible, seek to agree in good faith to re-establish the Initial Commercial Baseline, and failing such agreement within a reasonable period of time, the Customer shall have the right to terminate the Contract without liability on 3 months' notice at any time. In such circumstances, any costs shall be discussed in good faith between the parties.

## 8. AUDIT

- 8.1** The Customer (or its representatives or agents) shall be entitled to inspect, test and audit ("**audit**"):

- (a) the Supplier's Goods, performance of the Services and any Deliverables;
- (b) any facilities of the Supplier used in the manufacturing, packaging or supply of the Goods or the provision of the Services;
- (c) any relevant documents, reports, certificates, policies and procedures of the Supplier, including but not limited to quality management and food safety policies, traceability programmes, HACCP reviews, good manufacturing practices and hygiene control policies;
- (d) the Supplier's compliance with the requirements of the Mandatory Policies of the Customer; and
- (e) any approved sub-contractors of the Supplier in relation to all matters listed in clauses 8.1(a) to 8.1(d);

at any time (whether before or after delivery of the Goods or the supply of the Services). The Customer shall give the Supplier as much reasonable notice as possible however short notice or no notice may be given in the event of potential product recalls or withdrawals, regulatory investigations or unannounced third party customer audits or in the instance of suspected fraud.

8.2 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 incurred in carrying out the audit.

8.3 If following an audit the Customer considers that the Goods, Services or Deliverables do not conform or are unlikely to comply with the requirements of the Contract or the Supplier is in breach of the terms of the Contract, the Customer shall (without limiting its other remedies) inform the Supplier who shall at the Customer's request:

- (a) Immediately take such remedial action(s) at its own cost as necessary to remedy the defects; and
- (b) Provide to the Customer such evidence as the Customer shall reasonably require to show that any defects have been remedied.

8.4 Where the Supplier or its facilities are subject to any third party audit, the Supplier shall promptly provide the Customer with details of the outcome (including any non-conformances) from such third party audit and, if applicable, provide a copy of any audit report arising from such third party audit.

## 9. INTELLECTUAL PROPERTY

9.1 In relation to the Customer Materials:

- (a) The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) 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.

9.2 In relation to the Goods or Deliverables:

- (a) The Supplier and its licensors shall retain ownership of all Supplier IPR comprised in the Goods or Deliverables;
- (b) 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 and 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;
- (c) The Customer may sub-licence the rights granted in clause 9.2(b) to its customers, suppliers and contractors and to any member of its Group;
- (d) 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

- (e) 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.

9.3 The Supplier:

- (a) shall to the extent that the Goods incorporate materials to which a third party holds the Intellectual Property Rights, grant or shall procure that the relevant third parties grant to the Customer a non-exclusive, royalty-free, fully paid-up, perpetual worldwide licence to use and further develop such Goods. Such grant of licence shall include the right for the Customer to assign and transfer the licence to any third party to the extent necessary for such third parties in the provision of services to the Customer.
- (b) 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.

9.4 Clause 9 shall survive termination of the Contract.

## 10. CONFIDENTIALITY

10.1 A party (**Receiving Party**) shall keep in strict confidence all know-how and all other technical, commercial or other confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party ("**Confidential Information**") disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain (excluding any such information which is in the public domain other than through breach of this clause). The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations no less onerous than set out in this clause.

10.2 The provisions of clause 10.1 shall not apply to Confidential Information which: (a) the Receiving Party is required to disclose by law, any governmental or regulatory authority or by a court of competent jurisdiction, provided that the Receiving Party shall if so permitted provide the Disclosing Party with as much advance notice as possible and only provide such Confidential Information so as to satisfy the requirement at law, or of any governmental or regulatory authority; (b) can be shown by the Receiving Party's records was known to the Receiving Party, other than under an obligation of confidentiality, prior to its disclosure by the Disclosing Party; or (c) is lawfully disclosed to the Receiving Party by a third party free from any confidentiality restriction.

10.3 Clause 10 shall survive termination of the Contract.

## 11. INDEMNITY, LIABILITY & INSURANCE

**11.1** You shall indemnify and keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct 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) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, 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; and
- (d) any recall or withdrawal of any Goods or Deliverables or any other goods or products which incorporate or have been or could have been in contact with any Goods or Deliverables or are affected by the Goods, Services or Deliverables, to the extent that the recall or withdrawal is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors or breach by the Supplier of the terms of the Contract.

**11.2** Nothing in this Contract shall restrict or limit your liability for: (a) death or personal injury caused by your negligence or that of your employees, agents or sub-contractors; (b) fraud or fraudulent misrepresentation by you or your employees; (c) breach of any obligation as to title implied by statute; or (d) any act or omission for which liability may not be limited under any applicable law.

**11.3** During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force with a reputable insurance company all necessary insurances for the operation of its business, including the following insurances to cover the liabilities that may arise under or in connection with the Contract:

- (a) product liability insurance (including component and ingredient damage) 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;
- (b) public liability insurance for not less than €5,000,000 per claim; and
- (c) employer liability insurance for not less than €10,000,000 per claim.

**11.4** The Supplier shall ensure the Customer's interest is noted on each insurance policy referred to above or that a generic interest clause has been included.

**11.5** The Supplier shall, on the Customer's request, produce both the insurance certificate giving details of the cover and the receipt for the current year's premium in respect of each insurance.

**11.6** Clause 11 shall survive termination of the Contract.

## 12. TERMINATION & ITS EFFECT

**12.1** Without limiting its other rights or remedies, the Customer may, at any time and without liability, terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) any contract(s) between the Customer and its customer(s) upon which the Contract depends in whole or part is terminated or discharged, in which circumstances the Customer will provide the Supplier with as much notice as reasonably possible taking into account the Customer's reasonable business needs; or
- (b) there is a change of Control of the Supplier which the Customer (acting reasonably) considers will be detrimental to the Supplier's business; or
- (c) the Supplier knowingly or recklessly does, or permits to be done, anything which actually, or may, prejudice or harm the image or reputation of the Customer, its products or its values.

**12.2** The Customer may terminate the Contract on three months' written notice to the Supplier, if the parties fail to reach agreement within a reasonable time that the charges for the Goods and/or Services will be amended in accordance with a request by the Customer following a Benchmark Review carried out in accordance with clause 7.

**12.3** In any of the circumstances in these General Terms in which a party may terminate the Contract, where both Goods and Services are supplied, that party may at its option indicate which Goods and/or Services are terminated and which, if any, the Supplier shall continue to supply to the Customer.

**12.4** Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if: (a) in the Customer's sole opinion, the Supplier commits a material or persistent breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so; or

- (b) the Supplier (or any partner of the Supplier, being a partnership) suspends, or threatens to suspend, payment of its debts or is generally unable to, or is deemed unable to, pay its debts as they fall due or seeks relief under any other bankruptcy or insolvency relief law; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company); or
- (d) the Supplier (being an individual) is, or (being a partnership) has any partner who is, the subject of a bankruptcy petition or order; or
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (f) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 12.3(b)-(e) (inclusive); or
- (g) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (h) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's ability to fulfil its obligations under the Contract is in jeopardy; or
- (i) the Supplier (being an individual) dies or, by reason of illness or incapacity, is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**12.5** Termination or expiry of the Contract shall not affect any of the parties' rights and remedies that have accrued and clauses which expressly or by implication are to come into effect or which survive termination of the Contract shall continue in full force and effect.

**12.6** On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Goods and Deliverables whether or not they are complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer or its appointed agents may enter the Supplier's premises (or any such premises on which the Deliverables and/or Customer Materials are stored) and take possession of such Goods, Deliverables and Customer Materials and the Supplier grants (and shall procure all relevant third parties shall grant) the Customer and its appointed agents a licence to do so. Until they have been returned or delivered, the Supplier shall be solely responsible for the safe keeping of such Goods, Deliverables and Customer Materials and will not use them for any purpose not connected with the Contract.

### **13. TUPE**

**13.1** The following definitions apply in this clause 13:

- (a) **Replacement Supplier:** a third party chosen by the Customer to take over the provision of all or part of the Services.
- (b) **Service Transfer Date:** the date or dates on which there is a transfer of responsibility for the provision of the Services or part thereof between the Supplier and the Customer and/or a Replacement Supplier (as the case may be).
- (c) **Transferring Employees:** those persons listed in a Schedule to be agreed by the parties prior to the Service Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Service Transfer Date.

**13.2** The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier and where all or part of the Services continue to be provided by the Customer and/or a New Supplier (**Service Transfer**), this may result in a relevant transfer for the purposes of TUPE. If there is such a Service Transfer, the employment of the Transferring Employees shall transfer to the Customer and/or the New Supplier with effect from the Service Transfer Date.

**13.3** Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Transferring Employees prior to the Service Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the Customer and/or the New Supplier.

**13.4** Under a relevant transfer to which TUPE applies, the Supplier shall perform and discharge all its obligations in respect of all Transferring Employees and their representatives up to and including the Service Transfer Date.

**13.5** The Supplier shall indemnify the Customer and any Replacement Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Customer

and/or the Replacement Supplier in connection with or as a result of:

- (a) any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Service Transfer Date;
- (b) any failure by the Supplier to comply with its obligations under regulation 8 of TUPE, or any award of compensation under TUPE, save where such failure arises from the failure of the Customer and/or the Replacement Supplier to comply with its or their duties under regulation 8 of TUPE; and
- (c) a claim by any person who transfers or alleges that they have transferred to the Customer or the Replacement Supplier but whose name is not on a list of Transferring Employees provided by the Supplier prior to the Service Transfer Date.

### **14. DATA PROTECTION**

**14.1** The following definitions apply in this clause 14:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures as defined in the Data Protection Legislation.

**14.2** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.

**14.3** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

**14.4** Without prejudice to the generality of clause 14.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Contract:

- (a) process the Personal Data only on behalf of the Customer and in accordance with its written instructions;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- (c) ensure that only those of the Supplier's employees who need to have access to the Personal Data are granted access to such data and that those employees are obliged to keep the Personal Data confidential;
- (d) assist the Customer in responding to any request from a Data Subject in respect of Personal Data to ensure compliance with its obligations under the Data Protection Legislation;
- (e) notify the Customer immediately on becoming aware of a Personal Data breach;

- (f) delete or return all Personal Data and copies thereof to the Customer on termination of the Contract; and
- (g) not transfer any Personal Data outside the UK or the European Economic Area without the prior written consent of the Customer and, where the Customer consents to such transfer, to comply with the obligations of a Data Controller under the Data Protection Legislation to provide an adequate level of protection to any Personal Data that is transferred and with any reasonable instructions of the Customer.

**14.5** The Supplier shall not appoint any third party processor of Personal Data without the express prior written consent of the Customer.

**14.6** The Supplier shall indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 13 except and to the extent that such liabilities have resulted directly from the instructions of the Customer.

## **15. COMPLIANCE**

**15.1** In performing its obligations under the Contract, the Supplier shall (a) comply with all applicable laws, statutes, regulations and codes from time to time in force (**Relevant Requirements**); and (b) comply with the Mandatory Policies.

**15.2** The Supplier shall on an annual basis certify to the Customer in writing signed by an officer of the Supplier compliance with this clause 15 by the Supplier and all persons associated with it who are providing the Services or supplying the Goods in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

**15.3** The Supplier shall indemnify the Customer against any losses, liabilities, damages, costs and expenses incurred by, or awarded against the Customer as a result of any breach of this clause 15 by the Supplier.

**15.4** The Supplier warrants and represents that neither it or any of its officers, employees or agents associated with it:

- (a) has been convicted of any offence as referred to in the Mandatory Policies, including but not limited to under the Competition Act 2002, the Criminal Justice (Corruption Offences) Act 2018, the Criminal Law (Human Trafficking) Act 2008 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010; or
- (b) 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 under the Relevant Requirements.

**15.5** If required by the Customer, the Supplier shall register on the Supplier's Ethical Data Exchange (SEDEX) and link to the Customer (ZC1061698) and share their SEDEX membership number with the Customer. Other social audits demonstrating the Supplier's compliance with the Customer's Supplier Code of Conduct and its core values and principles of human rights, labour standards, the

environment and anti-corruption may also be requested by the Customer.

**15.6** Breach of this clause 15 shall be deemed a material breach of this Contract. If the Customer terminates this Contract for breach of this clause 15, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with third parties entered into before termination.

## **16. FORCE MAJEURE**

**16.1** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event, provided that in all cases the Supplier shall give written notice to the Customer of the impact of the Force Majeure Event on its ability to perform its obligations under the Contract and shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

**16.2** If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 30 days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

## **17. GENERAL**

**17.1** The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, delegate in any manner, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

**17.2** In these General Terms: (a) 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 (if it is a company) or its principal place of business (in any other case) 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 e-mail; (b) a notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the third 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 e-mail, at 9.00am on the next working day after transmission; and (c) the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**17.3** 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.



**17.4** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17.5** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**17.6** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**17.7** In relation to Services, the relationship of Supplier and Customer will be that of independent contractor and nothing in the Contract shall render it (or its staff) an employee, worker, agent or partner of the Customer and the Supplier shall not hold itself out as such and shall procure that its staff shall not hold themselves out as such. The Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Customer for and in respect of:

(a) any income tax, Pay Related Social Insurance (PRSI) and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

(b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual against the Client arising out of or in connection with the provision of the Services; and

The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

**17.8** Except as set out in this clause 17.8, a person who is not a party to the Contract shall not have any rights to enforce its terms. Each and every obligation of the Supplier to the Customer under the Contract is also owed to the Customer Affiliates, each of whom may enforce the terms of the Contract and references to Customer in the context of the Supplier's obligations shall be construed accordingly.

**17.9** Except as set out in these General Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer or notified to the Supplier.

**17.10** The Contract and any documents referenced within it constitute the entire agreement between the parties and supersede and extinguish all previous agreement, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**17.11** If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**"), then the parties agree that either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Customer and the Supplier shall attempt in good faith to resolve the Dispute.

**17.12** 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 laws of the Republic of Ireland.

**17.13** Each party irrevocably agrees that, subject to clause 17.11, the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).