

STANDARD TERMS AND CONDITIONS OF SUPPLY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CONDITION 20

1. INTERPRETATION

1.1. The following definitions and rules of interpretation apply in these Conditions:

"Accelerated Testing" means accelerated stability testing (usually over a period of 12 weeks) of the Products by the Supplier.

"Affiliate" means in relation to a company, each parent undertaking and each subsidiary undertaking of such parent undertaking (excluding the company in question).

"Applicable Laws" means all applicable laws, statutes, regulation and codes from time to time in force.

"Bribery Laws" means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction.

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

"Conditions" means these terms and conditions of supply.

"Contract" means the agreement between the Supplier and the Customer for the sale and purchase of the Products incorporating the Terms and Conditions of Supply and the Order.

"control" shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **"change of control"** shall be construed accordingly.

"Customer" means the person who purchases the Products from the Supplier and whose details are set out in the Order.

"Customer IPRs" means all Intellectual Property Rights of which the Customer is the owner or licensee and/or which are disclosed, licensed or provided to the Supplier pursuant an Order to enable the Supplier to manufacture the Products.

"Customer Materials" means all documents, information items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Contract.

"Delivery" has the meaning given to it in Condition 7.2.

"Delivery Date" means the date for delivery of the Products, as confirmed to the Customer in the Order Acceptance.

"Delivery Location"

means the Supplier's premises unless agreed otherwise between the parties in writing.

"Force Majeure Event"

means any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; non-performance by suppliers or subcontractors; or interruption or failure of utility service.

"Improvement"

any improvement, development, enhancement, modification or derivative of the Product (including any Customer Materials or Product Formula), or its design or manufacturing process, which would make the Products cheaper, more effective, more useful or more valuable, or would in any other way render the Products more commercially competitive.

"Intellectual Property Rights"

means details as to formulae, recipes and ingredients, patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, 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.

"Nominated Supplier"

means a supplier of packaging, raw materials or bulk as nominated by the Customer in relation to an Order

"Order"

means an order for the Products from the Supplier placed by the Customer in accordance with Condition 3.

"Order Acceptance"

has the meaning given to it in Condition 3.4

"Origination Costs"

means all those costs incurred by the Supplier relating to label origination

"Price(s)"

has the meaning given to it in Condition 4.1

"Product"	means the products ordered by and supplied to the Customer.
"Product Formula"	means the chemical formula, make-up, or recipe or a particular product that comprises Products.
"Real Time Testing"	means real time stability testing (usually over a period of 30 months) of the Products by the Supplier.
"Sampling Costs"	means the description or specification for the Products and their packaging set out or referred to in the Order.
"Specification"	means the description or specification for the Products and their packaging set out or referred to in the Order.
"Supplier"	means CosmoLab Manufacturing Ltd and registered in England and Wales with company number 07446591 whose registered office is at Tooth Towers, Lagonda Road, Cowpen Lane Ind. Est., Billingham, TS23 4JA, United Kingdom or its Affiliate as detailed in the relevant Order.
"Technical Agreement"	means the technical agreement issued by the Supplier to the Customer detailing, amongst other things, the allocation of responsibilities relating to the relevant Order.
"Testing Costs"	means all those costs incurred by the Supplier relating to the testing of the Products including but not limited to external laboratory testing and focus group testing.
"VAT"	means the value added tax chargeable under the Value Added Tax Act 1994.

1.2. Interpretation

In these Conditions:

- 1.2.1. Headings shall not affect the interpretation of these Conditions or any Contract.
- 1.2.2. A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.2.4. A reference to a part is to a party to the Contract and includes that party's personal representatives, successors or permitted assignees.
- 1.2.5. A reference to a Condition is to the relevant Conditions of these Conditions.
- 1.2.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.7. A reference to **"writing"** or **"written"** includes fax and email.

- 1.2.8. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. APPLICATION OF THESE CONDITIONS

- 2.1. These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2. No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract.
- 2.3. No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4. If there is a conflict between these Conditions and the terms of any Order, these Conditions will prevail.
- 2.5. Marketing and other promotional material relating to the Products are illustrative only and do not form part of the Contract.

3. ORDER PROCESS

- 3.1. The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Products and are incapable of being accepted by the Customer.
- 3.2. Each Order by the Customer to the Supplier shall be an offer to purchase Products subject to these Conditions.
- 3.3. An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier in accordance with Condition 3.4. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable
- 3.4. The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products shall arise, until the earlier of:
 - 3.4.1. the Supplier's written acceptance of the Order; or
 - 3.4.2. the Supplier dispatching the Products or notifying the Customer that they are available for collection (as the case may be),
 ("**Order Acceptance**").

- 3.5. Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.6. The Customer may only cancel an Order following Order Acceptance with the written agreement of the Supplier. Where the Supplier consents to cancellation of an Order the Customer, no part of the Deposit shall be refundable to the Customer, and the Customer shall pay to the Supplier on demand the costs (to the extent that such exceed the Deposit) reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the cancellation

4. PRICE AND PAYMENT

- 4.1. The price for the Products shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time ("**Price**").
 - 4.2. The Prices are exclusive of:
 - 4.2.1. packaging, delivery, and insurance which shall be charged in addition at the Supplier's standard rates, unless otherwise stated in writing by the Supplier;
 - 4.2.2. all Origination Costs, Sampling Costs and Testing Costs which will be invoiced as incurred and be payable by the Customer whether or not they have been set out on the Order; and
 - 4.2.3. VAT (or equivalent sales tax).
 - 4.3. Unless expressly stated in the Order that such requirement is waived or varied, a non-refundable deposit of an amount equal to 50% (or such other rate as may be agreed by the Supplier) of the Price plus any applicable VAT or equivalent sales tax, and shall be paid prior within 14 days of the date of the Contract (and in any event prior to the performance by the Supplier of its obligations under the Contract) as security for the performance of the contract by the Customer and part-payment of the Price ("**Deposit**"). The Supplier shall not be required to perform its obligations under this Agreement until such Deposit has been paid and any time period for performance shall be extended by an amount equal to any delay in the Deposit being paid.
 - 4.4. Unless otherwise agreed in writing the Supplier may increase prices for the Products so as to reflect one or more of the following:
 - 4.4.1. any factor beyond the Supplier's control (including without limitation increases in taxes and duties and increases in labour, materials and other manufacturing costs);
 - 4.4.2. any request by the Customer to change the dispatch and/or delivery date(s) (as applicable), quantities or types or specification of Products ordered, or method of transport (to a method that is more expensive than the Supplier's usual method of transport);
 - 4.4.3. any issue or delay caused by any instruction, act, or omission of the Buyer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products;
 - 4.4.4. any extra costs and charges relating to the Products being stored due to the Customer not taking or being able to take delivery of Products when ready.
 - 4.5. The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
 - 4.6. The Supplier shall invoice the Customer for the Products at any time after the Products are available for Delivery, or as otherwise set out in the Order.
 - 4.7. The Customer shall pay all invoices:
 - 4.7.1. in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice; and
 - 4.7.2. to the bank account nominated by the Supplier.
 - 4.8. Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - 4.8.1. the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force, and
 - 4.8.2. interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
 - 4.9. Surplus specific raw materials and components which have had to be purchased by the Supplier to meet minimum purchase requirements of a third party supplier above that required for each Order will be invoiced to the Customer when:
 - 4.9.1. the Products of that type have ceased to be manufactured;
 - 4.9.2. when no such Products have been manufactured for the Customer by the Supplier for a period of more than 3 months; and
 - 4.9.3. there are no relevant open orders.
 - 4.10. If any Product does not meet quality standards as determined by the Supplier, the Supplier may offer the Product to the Customer at a reduced price. Such price is to be determined by the Supplier.
- ## 5. SUPPLIER'S RESPONSIBILITIES
- 5.1. The Supplier shall use reasonable endeavours to deliver the Products to the Customer, in accordance with an Order in all material respects.
 - 5.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in an Order or otherwise agreed but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of the Contract.
 - 5.3. The Supplier shall use reasonable endeavours to perform its obligations as set out in the Technical Agreement.
- ## 6. SAMPLES
- 6.1. The Supplier may, where applicable, submit to the Customer for approval pre-production samples of the Products ("samples").
 - 6.2. The Supplier will not be under an obligation to manufacture the Products until the Customer has communicated its approval of the samples to the Supplier in writing (such approval not to be unreasonably withheld or delayed).
 - 6.3. The Customer acknowledges that there may be variations between Products, and between samples and Products, including:
 - 6.3.1. between samples and Products as a result of the manufacture of Products at a larger scale;
 - 6.3.2. between Product batches generally (whether samples or otherwise);
 - 6.3.3. as a result of naturally occurring variations within natural ingredients included within the samples and Products.
- The Supplier shall not be liable to the Customer, and the Customer shall not be entitled to reject Products or claim against the Supplier in respect of, as a result of any such variation to the extent that the Product satisfies the applicable tolerances and criteria within as set out in the relevant Product specification.

6.4. The Customer's approval of the samples constitutes irrevocable confirmation from the Customer to the Supplier that:

6.4.1. the Products manufactured in conformity with the samples (or differing only within normal industrial limits and/or the manufacturing tolerances agreed between the parties) will comply with the Specification; and

6.4.2. the Products will meet the necessary industry standards and requirements of quality specified.

7. DELIVERY

7.1. The Products shall be delivered Ex Works (Incoterms 2010) unless otherwise stated in the Order.

7.2. The Products shall be deemed delivered:

7.2.1. if delivered by the Supplier, on arrival of the Products at the Delivery Location; or

7.2.2. if collected by the Customer, when the Supplier makes the Products available for collection at the Delivery Location,

("Delivery").

7.3. Unless otherwise agreed by the Supplier, no Products shall be Delivered unless the full Price for the Order has been paid to the Supplier in full.

7.4. The Supplier may deliver Orders by instalments as agreed with the Customer. Where Orders are to be delivered by instalments, the Price for the Order (and not just the Price relating to the relevant instalment) shall be paid in full prior to Delivery of any instalment unless the Supplier agrees in writing that instalments may be invoiced and paid for separately. References in these Conditions to Orders shall, where applicable, be read as references to instalments.

7.5. Any dates specified by the Supplier for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Supplier shall not be liable for any loss or damage occurring through any failure or inability to meet such estimated dates. The Products may be delivered by the Supplier in advance of the estimated delivery date with the agreement of the Customer.

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

7.7. If the Customer fails to take delivery of an Order within seven Business Days of the Supplier notifying the Customer that the Order is ready for collection, then:

7.7.1. risk in the Products shall immediately pass to the Customer;

7.7.2. the Supplier shall store the Order and charge the Customer the sum of £5.00 per pallet per week (and for this purpose a "week" runs from Monday to Sunday inclusive, and there shall be no part weeks) or such other sum as the Supplier may specify from time to time, together with any other related costs and expenses; and

7.7.3. after the expiry of 3 months after the date that the Supplier notified the Customer that the Products were ready for Delivery (subject to payment of any outstanding Price) the Supplier may in its sole discretion resell or dispose of the Products in such manner as it may determine without accounting to the Customer therefore.

7.8. The Supplier may charge the Customer for any direct costs and expenses it incurs as a result of the Customer's late or non-receipt of delivery, such costs and expenses to include (but not be limited to) additional haulier costs and other delivery costs incurred by the Supplier and storage pursuant to Condition 7.7.2.

7.9. Where a Delivery is made in bulk, the Product shall be delivered in collapsible intermediate bulk containers ("IBC"). The IBCs must be returned to the Supplier in the same condition in which they were received by the Customer, at the sole cost of the Customer, within 60 days of Delivery. If the Customer fails to comply with this clause 7.9, the Customer shall on immediately on demand and presentation of invoice pay to the Supplier £750.00 per IBC not so returned (save that, where an ICB is returned in an inadequate condition, the Supplier shall be entitled reduce such charge as it considers appropriate to reflect said condition).

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

7.11. The parties agree that if, in respect of an Order, the Supplier delivers up to and including 15% more or less than the quantity of Products ordered, the Customer shall not be entitled to reject the Order, but a pro rata adjustment shall be made to the Order invoice.

8. MANUFACTURE, QUALITY AND PACKING

8.1. The Supplier shall manufacture, pack and supply the Products in accordance with all applicable generally accepted industry standards and practices.

8.2. The Supplier warrants that the Products shall, on Delivery:

8.2.1. materially conform to the Specification;

8.2.2. be free from material defects in design, material and workmanship on Delivery; and

8.2.3. comply with all applicable statutory and regulatory requirements.

8.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.4. The Supplier shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.

8.5. The Supplier shall obtain and maintain in force for the term of the Contract all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of the Contract.

8.6. The Customer shall have the right to inspect the Supplier's premises during normal working hours and at such frequency as is reasonable taking into account the size of the relevant Order and the relevant timings for fulfilment of the Order provided that the Customer provides at least 7 days prior written notice to the Supplier and that the Supplier may reasonably reject such a request from time to time.

9. ACCEPTANCE AND DEFECTIVE PRODUCTS

9.1. The Customer may reject any Products delivered to it that do not comply with Condition 8.2 provided that:

9.1.1. written notice of rejection is given to the Supplier:

- (a) in the case of a defect that is apparent on normal visual inspection, within three Business Days of Delivery;
- (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and

9.1.2. none of the events listed in Condition 9.3 apply.

9.2. If the Customer fails to give notice of rejection in accordance with Condition 9.1 it shall be deemed to have accepted the Products.

9.3. The Supplier shall not be liable for the Products' failure to comply with the warranty set out in Condition 8.2 if:

9.3.1. the Customer makes any further use of those Products after giving notice in accordance with Condition 9.1;

9.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, use and maintenance of the Products or (if there are none) good trade practice regarding the same;

9.3.3. the defect arises as a result of the Supplier:

- (a) following or using any drawing, design or Specification or any other Customer Materials supplied by the Customer; and/or
- (b) obtaining or using at the Customer's request packaging, raw materials or bulk from a Nominated Supplier;

9.3.4. the defect arises because of fair wear and tear, the actions or omissions of the Customer, wilful damage or negligence (other than that of the Supplier), or abnormal storage or working conditions;

9.3.5. the Products differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.4. If the Customer rejects Products under Condition 9.1 then the Supplier shall, at its option;:

9.4.1. replace the rejected Products; or

9.4.2. repay the price of the rejected Products subject to reasonable reductions.

9.5. Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' failure to comply with Condition 8.2.

9.6. These Conditions shall apply to any replacement Products supplied by the Supplier.

9.7. If the parties dispute whether any Products comply with Condition 8.2 such dispute shall be resolved in accordance with Condition 24.

10. TITLE AND RISK

10.1. Risk in Products shall pass to the Customer on Delivery.

10.2. Title to Products shall not pass to the Customer until the earlier of:

10.2.1. the Supplier receives payment in full (in cash or cleared funds) for the Products and all other sums that are due to the Supplier from the Customer for sales of Products, in which case title to these Products shall pass at the time of payment; or

10.2.2. the Customer resells those Products, in which case title to those Products shall pass to the Customer at the time specified in Condition 10.4.

10.3. Until title to Products has passed to the Customer, the Customer shall:

10.3.1. store those Products separately from all other Products held by the Customer so that they remain readily identifiable as the Supplier's property;

10.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to those Products; and

10.3.3. maintain those Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect those Products and the insurance policy.

10.4. Subject to Condition 10.5, the Customer may resell or use Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

10.4.1. it does so as principal and not as the Supplier's agent; and

10.4.2. title to those Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

10.5. If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in Condition 21.1.2, then, without limiting any other right or remedy the Supplier may have:

10.5.1. the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and

10.5.2. the Supplier may at any time:

(a) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and

(b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored to recover them.

11. PRODUCT RECALL AND LIABILITY

11.1. If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market ("Recall Notice") it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.

11.2. If any claim is made against the Customer arising out of or in connection with the manufacture of or any defect in the Products for which the Supplier is liable, the Customer shall notify the Supplier as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Supplier to avoid, compromise or defend the claim and

any proceedings in respect of the claim, subject to the Customer being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.

- 11.3. For the avoidance of doubt, where the Customer is not subject to a Recall Notice and has instead opted to recall products from the market under its own volition, the Supplier will not be under an obligation to suspend supply of the Products under any Order and, without prejudice to the other terms of these Conditions, the Customer will be liable for any failure to make payment in accordance with the terms of the Contract.

12. CUSTOMER'S OBLIGATIONS

- 12.1. The Customer shall:

- 12.1.1. perform its obligations as set out in the Technical Agreement;

- 12.1.2. co-operate with the Supplier in all matters relating to the Contract;

- 12.1.3. appoint a manager in respect of the Contract, such person as identified in the Order. That person shall have authority to contractually bind the Supplier on all matters relating to the Order;

- 12.1.4. provide to the Supplier in a timely manner all document, information, items and materials in any form (whether owned by the Customer or a third party) required under an Order or otherwise reasonably required by the Supplier in connection with the Contract and ensure that they are accurate and complete in all material respects;

- 12.1.5. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to manufacture and deliver the Products in accordance with all applicable timings; and

- 12.1.6. comply with any additional responsibilities of the Customer as set out in the relevant Order.

- 12.2. The Customer shall be responsible for ensuring the accuracy of information submitted by the Customer, or any third parties instructed by the Customer, including but not limited to:

- 12.2.1. any applicable Specification;

- 12.2.2. any formula or recipe to which the Products are to be manufactured; and

- 12.2.3. the details of Nominated Suppliers.

- 12.3. If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees ("**Customer Default**") then:

- 12.3.1. without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer its agents, subcontractors, consultants or employees, as the case may be;

- 12.3.2. without limiting its other rights or remedies the Supplier shall have the right to suspend performance until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- 12.3.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising from the Customer Default; and

- 12.3.4. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising from the Customer's Default.

- 12.4. The Customer shall have the sole responsibility for ensuring compliance of the Products with all Applicable Laws whatsoever, and shall have sole responsibility for ensuring that all marketing, distribution, sale and use of the Products (including the sale to consumers) is undertaken in accordance with all Applicable Laws. For the purposes of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009, as may be amended or updated from time-to-time (the "**Regulations**"), the Customer shall be the "Responsible Person" (as defined in the Regulations) and shall have sole responsibility for fulfilling the duties of the Responsible Person under the Regulations in relation to the Products.

- 12.5. The Customer shall have sole responsibility for obtaining and maintaining at its own expense all licences, registrations, records, approvals, consents, authorisations, certifications or otherwise necessary or desirable for the acquisition, carriage, marketing, distribution, sale or use of the Products under all Applicable Laws whatsoever, and if requested by the Supplier shall produce evidence of the same to the Supplier on demand. Failure to do so shall not entitle the Customer to withhold or delay payment.

- 12.6. It shall be the sole responsibility of the Customer to ensure that the Products (including the composition of the Products and Specification) are appropriate for the marketing, distribution, sale and use of the Products by any person (including the sale to and use by consumers), and satisfies all safety laws, regulations and codes, and is otherwise in compliance with all Applicable Laws whatsoever. The Customer shall have sole responsibility for the carrying out all analysis and tests necessary or desirable to ensure this is the case. No warranty, representation or undertaking is given by the Supplier that the Products are suitable for use with any particular product or for any particular purpose or satisfy any Applicable Laws.

13. NON-SOLICITATION

- 13.1. The Customer shall not, without the prior written consent of the Supplier, at any time from the Order Acceptance to the expiry of 12 months after expiry or termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier.

- 13.2. Any consent given by the Supplier in accordance with Condition 13.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. Ownership of intellectual property rights

- 14.1.1. The Supplier acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.

- 14.1.2. The Customer:

- (a) warrants that it has the right to authorise the Supplier to manufacture and supply the Products to the Customer's Specification;
- (b) acknowledges that all Intellectual Property Rights:
 - (i) used in the performance of the Contract that originate from the Supplier shall remain the exclusive property of the Supplier (or, where applicable, the third party licensor from whom the Supplier derives the right to use them); and
 - (ii) including any techniques, ideas or know-how gained during the performance of the Supplier's obligations under the Contract shall be the exclusive property of the Supplier.

14.1.3. The Customer acknowledges that all IPRs used for the manufacture of the Products of or that originate from the Supplier (including for the avoidance of doubt any formulas, methods, plans, inventions, initiatives, discovers, improvements, processes, performance methodologies, techniques, or otherwise) shall remain the exclusive property of the Supplier or, where applicable, the third party licensor from whom the Supplier derives the right to use them.

14.1.4. The Customer warrants that it shall not make any attempt to analyse, copy or replicate (nor shall it approach any third party in order to analyse, copy or replicate), in whole or in part, any IPRs of the Supplier. The Customer agrees to indemnify and keep indemnified the Supplier 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 and expenses suffered or incurred by Supplier arising out of or in connection with any breach of the warranty given pursuant to this Condition 14.1.4.

14.1.5. All IPRs in respect of any Improvement shall belong to the party who made, developed or acquired it.

14.1.6. The Supplier confirms that it shall not incorporate any Improvement in the Product without the prior consent of the Customer. The Customer acknowledges that no Improvement will be incorporated into the Product unless such Improvement has been notified to the Supplier and its incorporation in the Products (together with any resulting amendments, variations, or supplements to the Prices, the Order, or these Conditions) is agreed by the Supplier.

14.2. Licence to use technology and trade marks

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

14.2.2. The Supplier shall not represent that it has any title in or right of ownership to the Customer IPRs or do or suffer to be done any act or thing which may in any way impair the rights of the Customer in any of the Customer IPRs or bring into question the validity of their registration.

15. INDEMNITY

15.1. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

- 15.1.1. any work required on or to the Products or other act or omission of the Supplier undertaken in accordance with the requirements or instructions of the Customer or the Specification;
- 15.1.2. use by the Supplier of the Customer IPRs or Customer Materials, including any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights, provided that such use by the Supplier is in accordance with the terms of the Contract.
- 15.1.3. No condition, warranty or representation whether express or implied is given by the Supplier that the Products will not infringe the rights of any third party when exported to or used or resold in any country outside the United Kingdom. The Customer shall be solely liable for establishing whether Products may lawfully be so exported used or resold and shall indemnify the Supplier against any and all liabilities, claims, losses and costs arising by reason of any infringement or alleged infringement of third party rights by reason of any such export use or resale.
- 15.1.4. If any third party makes a claim, or notifies an intention to make a claim, against the Supplier that may reasonably be considered likely to give rise to a liability under this indemnity ("Claim"), the Supplier shall:
 - (a) as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer;
 - (c) provide reasonable assistance to the Customer in relation to the Claim;
 - (d) be deemed to have given the Customer sole authority to avoid, dispute, compromise or defend the Claim.

16. COMPLIANCE WITH LAWS AND POLICIES

In performing its obligations under the Contract, each party shall comply with all Applicable Laws.

17. PRODUCT FORMULAS

- 17.1. Where the Supplier undertakes to manufacture Products using a Product Formula it has not developed but which has been supplied by or on behalf of the Customer, the Supplier will manufacture such Products using the Product Formula in accordance with the ingredients and instructions supplied by the Customer, but in doing so will not accept any liability for the Product Formula. The Customer agrees to indemnify and keep indemnified the Supplier 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 and expenses suffered or incurred by Supplier arising out of or in connection any Product Formula, information, or materials supplied by or on behalf of the Customer.
- 17.2. Where a Product Formula requires specific raw materials or supplies which are not standard stock items of the Supplier, the Supplier may require the Customer to fund or underwrite the purchase of such.
- 17.3. If the Customer supplies any raw materials or supplies to the Supplier, the Customer warrants that these are of good quality and suitable for the relevant Product.
- 17.4. The Supplier shall have no liability for raw materials or supplies supplied by or on behalf of the Customer.

18. ANTI-BRIBERY

- 18.1. For the purposes of this Condition 18 the expressions "adequate procedures" and "associated with" shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 18.2. Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 18.2.1. all of that party's personnel;
- 18.2.2. all others associated with that party; and
- 18.2.3. all of that party's subcontractors,
- involved in performing the Contract so comply.
- 18.3. Without limitation to Condition 18.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any
- such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 18.4. Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this Condition 18.

19. CONFIDENTIALITY

- 19.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the formulae, recipes and ingredients of the Products (and details as to their sourcing), business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 19.2.
- 19.2. Each party may disclose the other party's confidential information:
- 19.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 19; and
- 19.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.3. No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

20. LIMITATION OF LIABILITY

- 20.1. This Condition 20 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees and agents) to each other for:
- 20.1.1. any breach of the Contract however arising;
- 20.1.2. any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and

- 20.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 20.2. Nothing in the Contract shall limit or exclude the liability of either party for:
- 20.2.1. death or personal injury resulting from negligence;
- 20.2.2. fraud or fraudulent misrepresentation;
- 20.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 20.2.4. breach of section 2 of the Consumer Protection Act 1987; or
- 20.2.5. the indemnities contained in these Conditions.
- 20.3. Without prejudice to Condition 20.2, neither party shall under any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 20.3.1. loss of profit;
- 20.3.2. loss of goodwill;
- 20.3.3. loss of business;
- 20.3.4. loss of business opportunity;
- 20.3.5. loss of anticipated saving; or
- 20.3.6. special, indirect or consequential damage,

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

- 20.4. Without prejudice to Condition 20.2 or Condition 20.3, the Supplier's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to 100% (one hundred percent) of the sums paid to the Supplier by the Customer under the Contract in the preceding calendar year prior to the claim.
- 20.5. The Supplier will have no liability to the Customer for any product stability issues that may occur in respect of the Product if the Customer chooses for the Product stability to be tested by Accelerated Testing. The Customer acknowledges that the only way to ensure accurate Product stability testing is to use the Real Time Testing rather than the Accelerated Stability Testing. Accelerated Testing is undertaken at the sole risk and responsibility of the Customer. The Customer agrees to indemnify and keep indemnified the Supplier 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 and expenses suffered or incurred by Supplier arising out of or in connection with Product stability where Accelerated Testing is undertaken.

21. TERMINATION

- 21.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

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

21.1.2. if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party cease or threatens to cease to carry on business.

21.2. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

21.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or

21.2.2. there is a change of control of the Customer.

22. CONSEQUENCES OF TERMINATION

22.1. On termination or expiry of the Contract:

22.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Products manufactured and/or supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and

22.1.2. the Supplier shall on request return any of the Customer Materials not used up in the provision of the Products.

22.2. The termination or expiry of the Contract (however caused) will not affect any rights and/or liabilities of either party which have accrued before termination or expiry, or any provision of Contract which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.

23. FORCE MAJEURE

23.1. If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

23.2. The Affected Party shall:

23.2.1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

23.2.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving written notice to the Affected Party.

24. DISPUTE RESOLUTION

24.1. Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this Condition 24.

24.2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

24.3. The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

24.3.1. Within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.

24.3.2. If the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 14 days to discuss the dispute and attempt to resolve it.

24.4. If the dispute has not been resolved within 21 days of the first meeting of the chief executives (or equivalent) under Condition 24.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

24.5. Until the parties have completed the steps referred to in Condition 24.3 and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

25. GENERAL

25.1. **Assignment and other dealings:** The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier. The Supplier may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

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

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

remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

25.4. **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 Condition shall not affect the validity and enforceability of the rest of the Contract.

- 25.5. **Entire agreement:** The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 25.6. **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 25.7. **Third party rights:** No one other than a party to the Contract, their successors and permitted assignees shall have any right to enforce any of its terms.
- 25.8. **Governing law and jurisdiction:** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.