

PURCHASE ORDER **TERMS & CONDITIONS**

1. **INTERPRETATION**

1.1 In the Contract the following definitions shall apply.

Applicable Laws	means all laws or regulations, regulatory policies, guidelines, industry codes or any other rules which relate to the supply of the Goods and/or Services from time to time and which are in force in the Supplier's territory or the territory to which the Goods are to be delivered;
Business Day	a day other than a Saturday, Sunday or public holiday when banks in London are open for business;
Calendar Day	any day of a year;
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 18.7;
Contract	the contract between Omega and the Supplier for the sale and purchase of the Goods and/or the supply of Services in accordance with these Conditions;
Data Protection Legislation	all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK);



Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
Delivery Date	the date specified in the Order;
Delivery Location	the address for delivery of Goods as set out in the Order;
Goods	the goods (or any part of them) set out in the Order;
Incoterms	means the Incoterms 2020 as they may be updated from time to time;
Omega	means either, as set out in the Order: <ol style="list-style-type: none"> 1. OMEGA INGREDIENTS LIMITED a company registered in England and Wales with registered company number 04277313 and whose registered address is at Cygnus House, Orion Court, Great Blakenham, Suffolk IP6 ORL; 2. MAVERICK INNOVATIONS LIMITED a company registered in England and Wales with registered company number 04277305 whose registered address is at Cygnus House, Orion Court, Great Blakenham, Suffolk IP6 ORL; or 3. OMEGA INGREDIENTS CORP (USA) a company incorporated under the laws of the state of Delaware, USA with company number SR#20180880127 whose principal place of business is at 1815 John F. Kennedy Blvd, Apt 2505, Philadelphia, PA 19103, USA;
Order	Omega's order for the Goods and/or Services, as set out in Omega's purchase order form;
Services	the services (or any part of them) as set out in the Order;
Specification	any specification for the Goods and/or Services that is agreed in writing by Omega and the Supplier;
Supplier	the person or firm from whom Omega purchases the Goods and/or Services.



1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 A reference to writing or written includes emails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by Omega to purchase the Goods and/or Services in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; or

2.3.2 the Supplier doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. THE GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and, if applicable any:

3.1.1.1 Specification; and/or

3.1.1.2 sample of the Goods provided by the Supplier to Omega and which Omega have approved in writing to the Supplier;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Omega expressly or by implication, and in this respect Omega relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so after delivery; and



- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Supplier warrants and represents that any technical information given by it to Omega in connection with the Goods will be true and accurate in all respects and acknowledges and agrees that Omega will rely on such information in its use of the Goods. The Supplier undertakes that it shall immediately inform Omega on becoming aware that any such technical information provided is untrue or otherwise inaccurate.
- 3.4 Omega may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.5 If following such inspection or testing Omega considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Omega shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6 Omega may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY

- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in accordance with any packaging specification notified by Omega to the Supplier (if applicable) and in all circumstances in accordance with best industry standards and in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), 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;
- 4.1.3 each delivery must be accompanied by such additional certification and other documentation as may be specified by Omega in the Order; and
- 4.1.4 if the Supplier requires Omega to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

- 4.2 In addition, the Supplier shall ensure that all Goods which are to be subject to customs clearance are correctly categorised for the purpose of such customs clearance.
- 4.3 The Supplier shall deliver the Goods, unless otherwise agreed in writing between the parties:
- 4.3.1 on the Delivery Date;
 - 4.3.2 at the Delivery Location and;
 - 4.3.3 during Omega's normal business hours,
- and time for delivery shall be of the essence for the purposes of the Contract.
- 4.4 Delivery of the Goods shall be in accordance with the Incoterm stated in the Order.
- 4.5 The Supplier shall not deliver the Goods in instalments without Omega's prior written consent. Where it is agreed that the Goods are to be 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 entitle Omega to the remedies set out in clause 6.

5. THE SERVICES

- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to Omega in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with Omega in all matters relating to the Services, and comply with all instructions of Omega;
 - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that Omega expressly or impliedly makes known to the Supplier;
 - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;



- 5.3.6 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 Omega, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Omega's premises or such other premises where the Services are to be performed;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Omega to the Supplier (**Omega's Materials**) in safe custody at its own risk, maintain Omega's Materials in good condition until returned to Omega, and not dispose or use Omega's Materials other than in accordance with the Omega's written instructions or authorisation;
- 5.3.10 not do or omit to do anything which may cause Omega to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Omega may rely or act on the Services; and
- 5.3.11 comply with any additional obligations as may be set out in the Specification.

6. REMEDIES

- 6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, Omega shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:
 - 6.1.1 to terminate the Contract (either in whole or in part) with immediate effect by giving written notice to the Supplier;
 - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3 to recover from the Supplier any costs incurred by Omega in obtaining substitute goods and/or services from a third party;
 - 6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
 - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by Omega which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Goods do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, Omega may exercise any one or more of the following remedies:

- 6.2.1 to terminate the Contract (in whole or in part);
 - 6.2.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.2.5 to recover from the Supplier any costs incurred by Omega in obtaining substitute goods from a third party; and
 - 6.2.6 to claim damages for any other costs, loss or expenses incurred by Omega which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.3 In addition to Omega's rights as remedies as set out in clause 6.2, where Omega is unable to accept the delivery of any Goods because, acting in its absolute discretion, it believes that the Goods are contaminated or otherwise unfit to be accepted into the Delivery Location, Omega may store such rejected Goods in third party storage pending collection by the Supplier. Where Omega does this it may recover all costs it incurs (including any transportation costs) in so doing from the Supplier.
- 6.4 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3 then, without limiting or affecting other rights or remedies available to it, Omega shall have one or more of the following rights and remedies:
- 6.4.1 to terminate the Contract (either in whole or in part) with immediate effect by giving written notice to the Supplier;
 - 6.4.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - 6.4.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
 - 6.4.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 6.4.5 to recover from the Supplier any expenditure incurred by Omega in obtaining substitute services or deliverables from a third party; and
 - 6.4.6 to claim damages for any additional costs, loss or expenses incurred by Omega arising from the Supplier's failure to comply with clause 5.3.
- 6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.6 Omega's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. **TITLE AND RISK**

7.1 Title and risk in the Goods shall pass to Omega on completion of delivery, delivery occurring in accordance with the relevant Incoterm as set out in the Order.

8. **PRICE AND PAYMENT**

8.1 The price of the Goods shall be the price set out in the Order.

8.2 The price of the Goods:

8.2.1 excludes amounts in respect of value added tax (**VAT**), which Omega shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.2.2 subject to the Incoterm stated in the Order, includes:

8.2.2.1 the costs of packaging

8.2.2.2 insurance;

8.2.2.3 carriage of the Goods; and

8.2.2.4 all customs charges, levies, tariffs and duties payable on the transit of the Goods.

8.3 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Omega, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.4 The Supplier may invoice Omega for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after Omega confirms to the Supplier that the Goods comply with the terms of the Contract. In respect of Services, the Supplier shall invoice Omega on completion of the Services. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, Omega's order number, the Supplier's VAT registration number and any supporting documents that Omega may reasonably require.

8.5 No extra charges shall be effective unless agreed in writing with Omega.

8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Omega to inspect such records at all reasonable times on request.

8.7 Omega shall pay correctly rendered invoices, unless otherwise agreed in writing by the parties, within 30 Calendar Days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

8.8 Omega may at any time, without notice to the Supplier, set off any liability of the Supplier to Omega against any liability of Omega to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Omega may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Omega of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. BREXIT TRIGGER, RENEGOTIATION AND TERMINATION

9.1 If a Brexit Trigger Event (as defined below) occurs, Omega may:

9.1.1 require the Supplier to negotiate in good faith an amendment to the Contract to alleviate the Brexit Trigger Event; and

9.1.2 if no such amendment is made to the Contract within 30 Calendar Days, terminate the Contract by giving the Supplier not less than seven Calendar Days' written notice.

9.2 On termination under this clause, clause 17.3, clause 17.5 and clause 17.5 shall apply.

9.3 **Brexit Trigger Event** means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:

9.3.1 an adverse impact on Omega's ability to perform the Contract in accordance with its terms and the law;

9.3.2 the imposition of any trade tariff applicable to the Goods supplied under the Contract and which Omega is responsible for paying;

9.3.3 a decrease in the value of sterling against the currency in which the Goods and/or Services are being purchased of five percent or more; or

9.3.4 the price of the Goods and/or Services under the Contract exceeds the market value for similar products or services by at least five percent.

9.4 Save as expressly provided in this clause 9, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) the Contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of the Contract, the provisions of this clause shall prevail.



10. **INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Unless otherwise agreed in writing between the parties, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any of Omega's Materials) shall be owned by the Supplier.
- 10.2 The Supplier grants to Omega, or shall procure the direct grant to Omega of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Omega's Materials) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 Omega grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by Omega to the Supplier for the term of the Contract for the purpose of providing the Services to Omega.
- 10.4 All Omega's Materials are the exclusive property of Omega.

11. **PRODUCT RECALL**

- 11.1 The Supplier shall provide all assistance required by Omega where any products sold, or otherwise disseminated by Omega which incorporate the Goods have to be recalled as a result of any defect in the Goods (or any part of them) supplied by the Supplier under the Contract.
- 11.2 All such assistance required by Omega under clause 11.1 shall be at the Supplier's sole expenses.

12. **INDEMNITY**

- 12.1 The Supplier shall indemnify Omega against, and covenant to pay to Omega, an amount equal to:
- 12.1.1 all losses (including but not limited to all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Omega does or will incur or suffer; and
- 12.1.2 all claims or proceedings made or brought or threatened against Omega by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses Omega does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings,

in each case arising out of or in connection with:

- 12.1.3 any claim made against Omega for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- 12.1.4 any claim made against Omega by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods and/or Services, to the extent that the defects in the Goods and/or Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 12.1.5 any claim made against Omega by a third party arising out of or in connection with the supply of the Goods and/or 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;
- 12.1.6 any recall by Omega of any product incorporating any Goods (in whole or in part) supplied by the Supplier to Omega in non-conformance with the terms of the Contract; and
- 12.1.7 the Supplier's breach of:
- 12.1.7.1 clause 3.3;
 - 12.1.7.2 clause 4.1;
 - 12.1.7.3 clause 4.2; and
 - 12.1.7.4 clause 15.
- 12.2 Omega will not be under any obligations to mitigate, or procure the mitigation or, any of the losses, liabilities, costs, damages and expenses to which the indemnity in clause 12.1 applies.
- 12.3 This clause 0 shall survive termination of the Contract.
13. **LIMITATION OF LIABILITY**
- 13.1 Nothing in the Contract shall limit or exclude the Omega's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation; or
 - 13.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 13.2 Subject to clause 13.1, Omega shall not be liable to the Supplier, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 13.2.1 loss of profits;
 - 13.2.2 loss of sales or business;
 - 13.2.3 loss of agreements or contracts;



- 13.2.4 loss of anticipated savings;
- 13.2.5 loss of use or corruption of software, data or information;
- 13.2.6 loss of damage to goodwill; and/or
- 13.2.7 any indirect or consequential loss.
- 13.3 Subject to clause 13.1 and 13.2, the Omega's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the price paid or payable for the Goods and/or Services under the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.
14. **INSURANCE**
- 14.1 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, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Omega's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
15. **CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall not at any time disclose to any person any information of a confidential nature concerning the business, affairs, Omegas, clients or suppliers of the other party (**Confidential Information**) except as permitted by clause 15.2.
- 15.2 A party may disclose the other party's Confidential Information:
- 15.2.1 to its employees, officers, agents, representatives or advisers who need to know such information for the purposes of exercising its rights or carrying out its obligations under or in connection with the Contract (and shall ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information materially comply with this clause 15.2); and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 Neither party shall use the other's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
16. **COMPLIANCE WITH RELEVANT LAWS**
- 16.1 In performing its obligations under the Contract, the Supplier shall comply with all Applicable Laws, statutes, regulations and codes from time to time in force; and
- 16.2 Omega may immediately terminate the Contract for any breach of this clause 16 by the Supplier.

17. TERMINATION

- 17.1 Omega may terminate the Contract in whole or in part at any time before delivery of the Goods or completion of performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Omega shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 17.2 Without limiting its other rights or remedies, Omega may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 17.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven Calendar Days of the Supplier being notified in writing to do so;
 - 17.2.2 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 17.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 17.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 17.2.5 the Supplier's financial position deteriorates to such an extent that in Omega's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 17.3 If applicable, on termination of the Contract, the Supplier shall immediately deliver to Omega all Deliverables whether or not then complete, and return all Omega's Materials. If the Supplier fails to do so, then Omega may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 17.5 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

18. GENERAL

- 18.1 Omega may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 18.2 The Supplier 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 Omega.
- 18.3 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous contracts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.4 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 18.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 18.6 Nothing in the Contract seeks to limit or exclude either party's liability for fraud or fraudulent misrepresentation.
- 18.7 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.8 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.
- 18.9 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.
- 18.10 The Contract does not give rise to any rights under this Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.11 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 18.12 Each party shall comply with its obligations under the Data Protection Legislation to the extent that the Data Protection Legislation applies to the Contract.

19. **NOTICES**

- 19.1 Notice given under the Contract shall be in writing, sent to such addresses as specified in the Order (or to such other addresses as may be notified by the parties from time to time) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery.
- 19.2 A notice is deemed to have been received:
- 19.2.1 if delivered personally, at the time of the delivery;
 - 19.2.2 in the case of email, 9.00am the Business Day following transmission;
 - 19.2.3 in the case of airmail, five Business Days following the date of posting; or
 - 19.2.4 in the case of prepaid first class post or recorded delivery two Business Days following the date of posting,
- 19.3 To prove service, it is sufficient to prove that the notice was transmitted by email, to the email address of the party or, in the case of post, that the envelope containing the notice was properly addressed.
- 19.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20. **DISPUTE RESOLUTION**

- 20.1 Any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by the Contract (**Dispute**) shall be resolved in accordance with this clause 20.
- 20.2 In the first instance the parties shall consult in an attempt to reach an agreement in relation to the Dispute (**Consultation**).
- 20.3 If the parties fail to reach agreement through Consultation, they agree to enter into mediation to settle the Dispute and will do so in accordance with the CEDR Model Mediation Procedure (a copy of which is available from the CEDR website: http://www.cedr.com/about_us/modeldocs/). To initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation, and shall provide CEDR with a copy of the ADR Notice. Unless otherwise agreed between the parties within 14 Calendar Days of service of an ADR Notice of the Dispute, either party may apply to CEDR for the nomination of a mediator.
- 20.4 Unless otherwise agreed, the mediation will take place not later than 30 Calendar Days after the date of the ADR Notice. No party may commence any court proceedings or arbitration process in relation to any Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. If, following Consultation and mediation the Dispute continues, it shall, subject to clause 20.7 be finally resolved by arbitration pursuant to clauses 20.5 and 20.6.

- 20.5 It is agreed that:
- 20.5.1 to initiate arbitration a party (**Initiating Party**) must give notice in writing (**Arbitration Notice**) to the other party (**Receiving Party**) referring the Dispute to arbitration;
 - 20.5.2 the Arbitration Notice shall set out the nature of the Dispute and the names of three proposed arbitrators;
 - 20.5.3 the Receiving Party, within 14 Calendar Days of receipt of the Arbitration Notice, shall respond in writing to the Initiating Party (**Response**) either:
 - 20.5.3.1 approving the appointment of one of the three arbitrators proposed by the Initiating Party in the Arbitration Notice; or
 - 20.5.3.2 proposing the names of three alternative arbitrators.
 - 20.5.4 the Initiating Party shall, within 14 Calendar Days of receipt of the Response, either:
 - 20.5.4.1 confirm their approval, in writing to the Receiving Party, of one of the arbitrators proposed in the Response; or
 - 20.5.4.2 notify the Receiving Party in writing that none of the arbitrators proposed in the Response are approved.
 - 20.5.5 In the event of the Initiating Party sending notice to the Receiving Party pursuant to clause the 20.5.4.2, either party may apply to the President for the time being of the Law Society of England and Wales for the appointment of an arbitrator. The decision of the appointed arbitrator shall be final and binding upon the parties.
- 20.6 In every case, the following shall apply:
- 20.6.1 the arbitration shall be conducted by a single arbitrator pursuant to the provisions of the Arbitration Act 1996;
 - 20.6.2 the seat of the arbitration shall be London;
 - 20.6.3 English law shall govern the arbitration; and
 - 20.6.4 the language of the arbitration shall be English.
- 20.7 Nothing in clauses 20.5 to 20.7 shall prohibit either party from applying for urgent injunctive relief from any Court of competent jurisdiction.
21. **GOVERNING LAW AND JURISDICTION**
- 21.1 Each party expressly agree to exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods from the Contract.



- 21.2 Subject to clause 20, 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.
- 21.3 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.