

## **SALES ORDER** **TERMS & CONDITIONS**

### **1. INTERPRETATION**

#### **1.1 Definitions:**

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Calendar Day</b>	any day of a year;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 19.8;
<b>Contract</b>	the contract between Omega and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions;
<b>Customer</b>	the person or firm who purchases the Goods and/or Services from Omega;
<b>Data Protection Legislation</b>	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);
<b>Deliverables</b>	the deliverables set out in the Order Acknowledgement produced by Omega for the Customer;
<b>Delivery</b>	subject to the applicable Incoterm set out in the Order Acknowledgement, means the completion of the unloading of the Goods at the location set out in the Order Acknowledgement or such other location as the parties may agree;

<b>Force Majeure Event</b>	has the meaning given to in clause 17.1;
<b>Goods</b>	the goods (or any part of them) set out in the Order Acknowledgement;
<b>Incoterms</b>	means the Incoterms 2020 as they may be updated from time to time;
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring 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 or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>Omega</b>	means either, as set out in the Order: <ol style="list-style-type: none"> <li>1. <b>OMEGA INGREDIENTS LIMITED</b> 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;</li> <li>2. <b>MAVERICK INNOVATIONS LIMITED</b> 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</li> <li>3. <b>OMEGA INGREDIENTS CORP (USA)</b> 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;</li> </ol>
<b>Omega Materials</b>	has the meaning given in clause 8.1.7;
<b>Order</b>	the Customer's order for the Goods, as set out in the Order Acknowledgement;

**Order Acknowledgement** the acknowledgement of order issued by Omega to a Customer in order to accept the Customer's Order;

**Services** the services, including the Deliverables, supplied by Omega to the Customer as set out in the Specification;

**Specification** any specification for the Goods and/or Services, that is agreed in writing by the Customer and Omega.

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 Customer 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 the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order, the Order Acknowledgement and any applicable Specification are complete and accurate. This includes providing any specific instructions in respect of delivery.

2.3 The Order shall only be deemed to be accepted when Omega issues an Order Acknowledgement at which point the Contract shall come into existence.

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

2.5 A quotation for the Goods given by Omega shall not constitute an offer. A quotation shall only be valid for a period of seven Calendar Days from its date of issue.

## 3. GOODS

3.1 The Goods are as set out in the Specification.

3.2 Omega reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

- 3.3 Further, Omega may need to amend the Specification for other reasons (other than where it is required to do so by any applicable statutory or regulatory requirement when clause 3.2 shall apply), Omega shall contact the Customer as soon as reasonably practicable to inform it of any proposed change to the Specification. The parties will cooperate with each other to agree a revised Specification and:
- 3.3.1 if a revised Specification can be agreed, it shall be recorded in writing and signed by both parties; or
- 3.3.2 if a revised Specification cannot be agreed within 14 Calendar Days of Omega contacting the Customer pursuant to clause 3.3, Omega may (acting in its absolute discretion) terminate the Contract (in whole or in part) immediately on written notice to the Customer and without liability to the Customer.
- 3.4 Any samples, descriptive matter or advertising, including on Omega's website, produced by Omega and any descriptions or illustrations contained in Omega's promotional material are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 3.5 The Customer acknowledges and agrees that Omega has no knowledge as to the intended use of the Goods by the Customer and that Omega sells the Goods, subject to clause 5.1, without representation or warranty that the Goods will be fit for the specific purpose intended by the Customer. The Customer undertakes that it will, prior to incorporating the Goods with any other material(s), undertake its own tests to determine the safety and suitability of the Goods for the Customer's intended purposes.
- 3.6 Omega shall, save for death or personal injury arising from its negligence, have no liability (whatsoever) to the Customer in connection with the Customer's use of the Goods.
- 4. DELIVERY**
- 4.1 Omega shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree.
- 4.2 Delivery shall take place at such time as notified by Omega to the Customer and in accordance with the relevant Incoterm as set out in the Order Acknowledgement.
- 4.3 Delivery is completed in accordance with the relevant Incoterm as stated in the Order.
- 4.4 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. Omega shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Omega with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If Omega fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Omega shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Omega with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 Omega shall use its reasonable endeavours to keep the Customer updated if delivery is, or will be, delayed (so far as it is reasonably practicable for Omega to do so).
- 4.7 If the Customer fails to accept Delivery of the Goods when Delivery by Omega is attempted, then, except where such failure or delay is caused by Omega's failure to comply with its obligations under the Contract:
- 4.7.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Omega notified the Customer that the Goods were ready; and
- 4.7.2 Omega shall store the Goods until Delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If five Business Days after the day on which Omega first attempted Delivery and the Customer has not accepted Delivery of them, Omega may resell or otherwise dispose of part or all of the Goods and, may charge the Customer its reasonable costs in doing so.
- 4.9 If Omega delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but a pro rata adjustment shall be made to the Order invoice.
- 4.10 Omega may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY

- 5.1 Omega warrants that on Delivery, the Goods shall:
- 5.1.1 conform in all material respects with the Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to Omega within three Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - 5.2.2 Omega is given a reasonable opportunity of examining such Goods; and
  - 5.2.3 the Customer (if asked to do so by Omega) returns such Goods to Omega's place of business at the Customer's cost,

Omega shall, at its option replace the defective Goods or refund the price of the defective Goods in full.

- 5.3 Omega shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - 5.3.2 the defect arises because the Customer failed to follow Omega's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice regarding the same;
  - 5.3.3 the defect arises as a result of Omega following any design or Specification supplied by the Customer;
  - 5.3.4 the Customer alters such Goods without the written consent of Omega;
  - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Omega shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 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.

5.6 These Conditions shall apply to any replacement Goods supplied by Omega.

## 6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of Delivery and delivery occurring in accordance with the relevant Incoterm as set out in the Order.

6.2 Title to the Goods shall not pass to the Customer until Omega receives payment in full (in cash or cleared funds) for the Goods and any other goods that Omega has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Omega's property;
  - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
  - 6.3.4 notify Omega immediately if it becomes subject to any of the events listed in clause 13.1; and
  - 6.3.5 give Omega such information relating to the Goods as Omega may require from time to time.
- 6.4 Before Omega receives payment for the Goods, Omega may at any time:
- 6.4.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. SUPPLY OF SERVICES

- 7.1 Omega shall use its reasonable endeavours to supply the Services to the Customer in accordance with the Specification in all material respects.
- 7.2 Omega shall use reasonable endeavours to meet any performance dates for the Services as may be specified in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Omega reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Omega shall notify the Customer in any such event.
- 7.4 Omega warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order, the Order Acknowledgement and any information it provides in the Specification are complete and accurate;
  - 8.1.2 co-operate with Omega in all matters relating to the Services;

- 8.1.3 provide Omega, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, or such other location where the Services are to be performed and other facilities as reasonably required by Omega to provide the Services;
  - 8.1.4 provide Omega with such information and materials as Omega may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 8.1.5 prepare the Customer's premises for the supply of the Services;
  - 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 8.1.7 comply with all applicable laws, including health and safety laws;
  - 8.1.8 keep all materials, equipment, documents and other property of the Omega (**Omega Materials**) at the Customer's premises in safe custody at its own risk, maintain the Omega Materials in good condition until returned to the Omega, and not dispose of or use the Omega Materials other than in accordance with the Omega's written instructions or authorisation; and
  - 8.1.9 comply with any additional obligations as set out in the Specification or which are otherwise notified to the Customer by Omega in writing.
- 8.2 If Omega's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, Omega shall have the right to suspend performance of the Services 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 in each case to the extent the Customer Default prevents or delays Omega's performance of any of its obligations;
  - 8.2.2 Omega shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Omega's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - 8.2.3 the Customer shall reimburse Omega on written demand for any costs or losses sustained or incurred by Omega arising directly or indirectly from the Customer Default.

## 9. PRICE AND PAYMENT

- 9.1 The price of the Goods shall be the price set out in the Order Acknowledgement.
- 9.2 The price of the Goods:



- 9.2.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Omega at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 9.2.2 subject to the applicable Incoterm, excludes the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.3 The price of the Services shall be as set out in the Order Acknowledgement (which may be either fixed, or on a time and materials basis).
- 9.4 Omega reserves the right to:
- 9.4.1 increase the charges for the Services on an annual basis with effect from each anniversary of the date of the Contract in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of the Contract and shall be the latest available figure for the percentage increase in the Retail Prices Index;
- 9.4.2 increase the price of the Goods, by giving notice to the Customer at any time before Delivery, to reflect any increase in the cost of the Goods to Omega that is due to:
- 9.4.2.1 any factor beyond the control of Omega (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.4.2.2 any request by the Customer to change the Delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 9.4.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Omega adequate or accurate information or instructions in respect of the Goods.
- 9.5 Unless the Customer is notified in writing to the contrary, Omega may invoice the Customer (in the currency specified in the Order Acknowledgement) for the Goods on or at any time after the completion of Delivery. For the avoidance of doubt, Omega reserves the right to invoice the Customer immediately on receipt of an Order, an Order Acknowledgement only being issued once Omega have received payment of the invoice in full and cleared funds. Omega will generally do this where:
- 9.5.1 the Customer hasn't previously placed any orders with Omega; or
- 9.5.2 the Customer has been late make payment in respect of previous orders.
- 9.6 Unless otherwise agreed in writing between the parties, the Customer shall pay the invoice in full and in cleared funds within 30 Calendar Days of the date of the invoice.
- 9.7 Payment shall be made to the bank account nominated in writing by Omega. Time for payment is of the essence.

9.8 If the Customer fails to make any payment due to Omega under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate as set under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Omega may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Omega to the Customer.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Omega.

10.2 Omega grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.1.

10.4 The Customer grants Omega a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Omega for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. BREXIT TRIGGER, RENEGOTIATION AND TERMINATION

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

11.1.1 require Customer to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event; and

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

11.2 On termination under this clause, clause 14 shall apply.

11.3 **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:

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

- 11.3.2 an increase in the costs incurred by Omega in performing the Contract of at least five percent since the price for the Goods was last agreed;
  - 11.3.3 the imposition of any trade tariff applicable to the Goods supplied under the Contract and which Omega is responsible for paying; or
  - 11.3.4 the price of the Goods under the Contract is at least five percent lower than the market value for similar products;
- 11.4 Save as expressly provided in this clause 11, 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.

## 12. PRODUCT RECALL

- 12.1 Omega may issue a notice to recall or withdraw the Goods from the market (**Recall Notice**) if:
- 12.1.1 required to do so my law or at the request of any governmental or regulatory authority;
  - 12.1.2 the supply or use of the Goods infringes, or may infringe, a third party's Intellectual Property Rights;
  - 12.1.3 the Goods are, or may be, unsafe;
  - 12.1.4 the Goods are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
  - 12.1.5 a defect in the Goods may cause harm to Omega's reputation or brand; or
  - 12.1.6 any other reasonable ground.
- 12.2 The Customer must, at its own cost:
- 12.2.1 comply with any Recall Notice; and
  - 12.2.2 give such assistance as Omega reasonably require to recall or withdraw the Goods from the market, and comply with Omega's instructions about the process of implementing that recall or withdrawal.

## 13. TERMINATION

- 13.1 Without limiting its other rights or remedies, Omega may terminate the Contract, in whole or in part, with immediate effect by giving written notice to the Customer if:
- 13.1.1 the Customer commits a material breach of any term of the Contract and the Customer (if such a breach is remediable) fails to remedy that breach within five Business Days of being notified by Omega in writing to do so;

- 13.1.2 the Customer takes any step or action in connection with it 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;
- 13.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 13.1.4 the Customer's financial position deteriorates to such an extent that in Omega's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.1.5 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.2 Without limiting its other rights or remedies, Omega may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and Omega if the Customer becomes subject to any of the events listed in clause 13.1.1 to clause 13.1.4, or Omega reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3 For the purposes of clause 13.1.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest effect on the benefit Omega would otherwise derive from a substantial portion of the Contract over the term of the Contract. In deciding whether any breach is material, due regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 13.4 Without limiting its other rights or remedies, Omega may terminate the Contract, in whole or in part, with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

#### 14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Contract for any reason the Customer:
- 14.1.1 shall immediately pay to Omega all of Omega's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, Omega shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- 14.1.2 the Customer shall return all of the Omega Materials and any Deliverables or Goods which have not been fully paid for and if the Customer fails to do so, then Omega may enter the Customer's premises and take possession of them and until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.

14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 15. INDEMNITY

15.1 The Customer will indemnify Omega against, and covenant to pay Omega an amount equal to:

15.1.1 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

15.1.2 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 the Customer's:

15.1.3 use of the Goods (whatever that may be); and

15.1.4 breach of clause 17.3.

15.2 Omega will not be under any obligation to mitigate, or procure the mitigation of, any of the losses, liabilities, costs, damages and expenses to which the indemnity in clause 15.1 applies.

## 16. LIMITATION OF LIABILITY

16.1 Nothing in the Contract shall limit or exclude Omega's liability for:

16.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

16.1.2 fraud or fraudulent misrepresentation; or

16.1.3 any matter in respect of which it would be unlawful for Omega to exclude or restrict liability.

16.2 Subject to clause 16.1, Omega shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

16.2.1 loss of profits;

16.2.2 loss of sales or business;

16.2.3 loss of agreements or contracts;

- 16.2.4 loss of anticipated savings;
  - 16.2.5 loss of use or corruption of software, data or information;
  - 16.2.6 loss of damage to goodwill;
  - 16.2.7 loss of opportunity; and/or
  - 16.2.8 any indirect or consequential loss.
- 16.3 Subject to clauses 16.1 and 16.2, Omega's total liability to the Customer, 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.
- 16.4 Notwithstanding clause 16.1, the losses for which Omega assumes responsibility and which shall (subject to clause 16.2 and clause 16.3) be recoverable by the Customer include:
- 16.4.1 sums paid by the Customer to Omega pursuant to the Contract in respect of any Goods and/or Services not provided in accordance with the terms of the Contract;
  - 16.4.2 wasted expenditure; and
  - 16.4.3 losses incurred by the Customer arising out of or in connection with third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by regulators or competent authorities caused by the act or omission of Omega.
- 16.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 16.6 This clause 16 shall survive termination of the Contract.
- 17. FORCE MAJEURE**
- 17.1 **Force Majeure Event** means any circumstance not within Omega's reasonable control including, without limitation:
- 17.1.1 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;
  - 17.1.2 collapse of buildings, fire, explosion or accident;
  - 17.1.3 epidemic or pandemic;
  - 17.1.4 any labour or trade dispute, strikes, industrial action or lockouts;
  - 17.1.5 non-performance by suppliers or subcontractors; and

17.1.6 interruption or failure of utility service.

17.2 If Omega is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, Omega 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.

17.3 If the Force Majeure Event prevents, hinders or delays Omega's performance of its obligations for a continuous period of more than seven Calendar Days, Omega may terminate the Contract immediately on written notice to the Customer.

## 18. CONFIDENTIALITY

18.1 Each party undertakes that it shall not at any time disclose to any person any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party (**Confidential Information**) except as permitted by clause 18.2.

18.2 A party may disclose the other party's Confidential Information:

18.2.1 to its employees, officers, 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 18.2); and

18.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 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.

18.4 Further, the Customer shall not, and shall not permit any third party to, chemically analyse, reverse engineer, duplicate, disassemble, decompile, or otherwise attempt to determine the compositional makeup of:

18.4.1 the Goods;

18.4.2 samples of the Goods provided by Omega; or

18.4.3 any of Omega's Confidential Information.

## 19. GENERAL

19.1 For the avoidance of doubt, Omega reserves its right to recover, (on a full indemnity basis) all legal and other associated costs incurred by Omega in enforcing any term of the Contract.

- 19.2 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.
- 19.3 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 Omega.
- 19.4 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.
- 19.5 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.
- 19.6 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 19.7 Nothing in the Contract seeks to limit or exclude either party's liability for fraud or fraudulent misrepresentation.
- 19.8 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).
- 19.9 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.
- 19.10 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.
- 19.11 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 19.12 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 19.13 Each party shall comply with its obligations under the Data Protection Legislation to the extent that the Data Protection Legislation applies to the Contract.



## 20. NOTICES

- 20.1 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.
- 20.2 A notice is deemed to have been received:
- 20.2.1 if delivered personally, at the time of the delivery;
  - 20.2.2 in the case of email, 9.00am the Business Day following transmission;
  - 20.2.3 in the case of airmail, five Business Days following posting; or
  - 20.2.4 in the case of prepaid first class post or recorded delivery two Business Days from the date of posting.
- 20.3 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.
- 20.4 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.

## 21. DISPUTE RESOLUTION

- 21.1 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 21.
- 21.2 In the first instance the parties shall consult in an attempt to reach an agreement in relation to the Dispute (**Consultation**).
- 21.3 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/](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 10 Business Days of service of an ADR Notice of the Dispute, either party may apply to CEDR for the nomination of a mediator.
- 21.4 Unless otherwise agreed, the mediation will take place not later than 20 Business 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 21.7 be finally resolved by arbitration pursuant to clauses 21.5 and 21.6.

- 21.5 It is agreed that:
- 21.5.1 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;
  - 21.5.2 the Arbitration Notice shall set out the nature of the Dispute and the names of three proposed arbitrators;
  - 21.5.3 the Receiving Party, within 10 Business Days of receipt of the Arbitration Notice, shall respond in writing to the Initiating Party (**Response**) either:
    - 21.5.3.1 approving the appointment of one of the three arbitrators proposed by the Initiating Party in the Arbitration Notice; or
    - 21.5.3.2 proposing the names of three alternative arbitrators.
  - 21.5.4 the Initiating Party shall, within 10 Business Days of receipt of the Response, either:
    - 21.5.4.1 confirm their approval, in writing to the Receiving Party, of one of the arbitrators proposed in the Response; or
    - 21.5.4.2 notify the Receiving Party in writing that none of the arbitrators proposed in the Response are approved.
  - 21.5.5 In the event of the Initiating Party sending notice to the Receiving Party pursuant to clause the 21.5.4.2, 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.
- 21.6 In every case, the following shall apply:
- 21.6.1 the arbitration shall be conducted by a single arbitrator pursuant to the provisions of the Arbitration Act 1996;
  - 21.6.2 the seat of the arbitration shall be London;
  - 21.6.3 English law shall govern the arbitration; and
  - 21.6.4 the language of the arbitration shall be English.
- 21.7 Nothing in clauses 21.5 to 21.7 shall prohibit either party from applying for urgent injunctive relief from any Court of competent jurisdiction.

## 22. GOVERNING LAW AND JURISDICTION

- 22.1 Each party expressly agree to exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods from the Contract.

- 22.2 Subject to clause 21, 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.
- 22.3 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.