

**DATED**

**2018**

**(1) [REDACTED] LIMITED**

**AND**

**(2) [REDACTED] S.A.S.**

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**MANUFACTURING AND SUPPLY AGREEMENT**

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## MANUFACTURING AND SUPPLY AGREEMENT

DATE 2018

### BETWEEN:

- (1) LIMITED, a company incorporated in England and Wales with registered number whose registered office address is at London, England (the "**Customer**"); and
- (2) S.A.S, a company incorporated in France (SIRET ) whose principal place of business is at France (the "**Supplier**").

### BACKGROUND

- (A) The Customer is a designer and distributor of high quality in the luxury beauty market.
- (B) The Supplier has expertise in developing formulations for, and manufacturing, products.
- (C) The Customer wishes to appoint the Supplier and the Supplier wishes to accept the appointment from the Customer to manufacture and supply products for the Customer on the terms of this Agreement.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

1.1 In this Agreement, the following defined terms have the meanings set out below:

- Affiliate** means any person that, directly or indirectly, controls, is controlled by, or is under common control with another person. A person shall be deemed to control another person if the controlling person possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled person, whether through share ownership, the power to elect or appoint the board of directors or trustees, by contract, or otherwise;
- Applicable Laws** means all laws, regulations, codes, standards determined by any governmental regulatory authority and generally applicable industry or self-regulatory standards whether the same are regional, national or international which apply to the Manufacture and supply of Products throughout the world;
- Batch** means a quantity of Product Manufactured in a single manufacturing batch or slot;
- Batch Records** means the Supplier's records relating to the Manufacture and supply of each Batch;
- Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

<b>cGMP</b>	means the principles of current good manufacturing practice for the Products in each respective jurisdiction of the Territory, as amended and revised from time to time;
<b>Code of Conduct</b>	means such Code of Conduct and ethics as is contained in Schedule 2 hereto and amended from time to time.
<b>Co-Developed Formulations</b>	means those Formulations or aspects of Formulations that have been or are to be developed by the parties jointly, as identified in Schedule 1 or otherwise. For the avoidance of doubt, this shall include colours as applied to formulations;
<b>Components</b>	means any and all components, active ingredients, raw materials, excipients and packaging materials necessary to Manufacture Products in accordance with the Specifications;
<b>Confidential Information</b>	has the meaning given in clause 24.1;
<b>Customer Intellectual Property</b>	means the Intellectual Property Rights in the Customer Trade Marks, any Customer-Designed Packaging, the Labelling, any Customer-Supplied Components and any Co-Developed Formulations;
<b>Customer-Designed Packaging</b>	means the Packaging designed by or on behalf of the Customer as identified in Schedule 1 (including any Third Party Packaging);
<b>Customer-Supplied Components</b>	means the Components supplied by or on behalf of the Customer to the Supplier;
<b>Delivery Date</b>	means the date for delivery of Products specified in a Purchase Order in accordance with clause 4.3;
<b>Delivery Location</b>	means the location for delivery of Products specified in a Purchase Order in accordance with clause 4.3;
<b>Disaster</b>	means any unplanned interruption of the operations of, or inaccessibility to, the Supplier's manufacturing, shipping or storage facilities during which the Supplier requires relocation of any or all of its operations relating to the Products to an alternative facility or facilities;
<b>Disaster Recovery Plan</b>	means the plan agreed between the parties which defines the resources, actions, tasks and data required for the Supplier to continue its operations in the event of a Disaster;
<b>Effective Date</b>	means ;
<b>Force Majeure Event</b>	means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not reasonably have been foreseen by such party (or such person), or, if it could reasonably have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, strikes or other labour disturbances, epidemics, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared)

or armed hostilities or other national or international calamity, acts of terrorism or failure of energy sources;

**Formulation** means the formulation, specification or other characteristic or quality of a Product or its ingredients or materials, which is created, developed or specified by either or both of the parties for the Products (or any of them);

**Group Company** means the Customer and any of its Affiliates;

**Insurance** has the meaning given in clause 18.1;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how), and any other intellectual property rights, in each case whether registered or unregistered, and including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist now or will subsist in the future in any part of the world;

**Labelling** means all labels and other written, printed or graphic matter on or accompanying any Product or its Packaging;

**Loss** means all losses, liabilities, damages, costs, claims and expenses howsoever arising including reasonable legal fees on a solicitor and own client basis and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions;

**Manufacture** means all steps and activities necessary to produce Products in accordance with the Specifications, including, as applicable, the manufacturing, Formulation, filling, Packaging, inspecting, Labelling, testing, quality control and release of Products;

**Packaging** means the packaging for the Products, including both primary packaging (e.g. compacts, cases, tubes, tubs, bottles, applicators etc.) and secondary packaging (e.g. shrink-wraps, boxes, cases, bags etc.), including Third Party Packaging;

**Personnel** means employees, consultants, Sub-contractors or any other parties employed or engaged by the Supplier or its Affiliates to perform any of its obligations under this Agreement on its behalf;

**PO Number** means the reference number to be applied to a Purchase Order by the Supplier in accordance with clause 4.4;

**Products** means the products and Packaging and as listed in Schedule 1 and any other products or packaging that the parties may agree in writing to add to this Agreement;

**Product Price** means the price of the Products set out in Schedule 2 or agreed by the parties in accordance with clause 12;

<b>Purchase Order</b>	means a purchase order for Products submitted by the Customer in accordance with clause 4;
<b>Quality Agreement</b>	means an agreement or series of documents between the parties setting out the responsibilities of the parties in relation to the quality of Products manufactured and supplied under this Agreement, as amended by the parties from time to time;
<b>Quality Standards</b>	means the quality standards set out in the Quality Agreement;
<b>Shipment</b>	means an instalment or shipment of Products the subject of a Purchase Order;
<b>Specifications</b>	means the technical specifications for the Products and their Packaging and Labelling agreed between the parties and set out in a master product specification document or product dossier signed by the parties and maintained by the Supplier, as amended from time to time by written agreement of the parties;
<b>Sub-contractor</b>	means any individual or entity that is not an employee of the Supplier to whom the performance of any part of its obligations under this Agreement has been subcontracted;
<b>Supplier Intellectual Property</b>	means all Intellectual Property Rights in the Formulations (other than Co-Developed Formulations) and the Packaging (other than the Customer-Designed Packaging) and all know how and other Intellectual Property Rights necessary to Manufacture the Products, in each case to the extent they do not comprise or incorporate Customer Intellectual Property or the Customer's Confidential Information;
<b>Term</b>	means the term of this Agreement;
<b>Territory</b>	means the territory or territories as instructed by the Customer to the Supplier from time to time;
<b>Third Party Packaging</b>	has the meaning given in clause 7.1;
<b>TPP Delivery Date</b>	has the meaning given in clause 7.7;
<b>Trade Marks</b>	means the trade marks, whether or not registered, owned by or licensed to the Customer and used on or in relation to the Products, including those listed in Schedule 3; and
<b>VAT</b>	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Except where the context otherwise requires:

1.2.1 Clause and Schedule headings are included for convenience only and will not affect the construction or interpretation of this Agreement;

- 1.2.2 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words;
  - 1.2.3 any reference to a clause or Schedule is to the relevant clause or Schedule of this Agreement (as the case may be);
  - 1.2.4 use of the singular includes the plural and vice versa;
  - 1.2.5 any reference to "persons" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);
  - 1.2.6 the words "day" and "month" mean calendar day and calendar month unless otherwise stated;
  - 1.2.7 a reference to "writing" includes email;
  - 1.2.8 all references to the parties include their permitted successors and assigns.
- 1.3 Any reference to a statute or provision of a statute includes references to:
- 1.3.1 that statute or provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after this Agreement;
  - 1.3.2 any re-enactment of that statute or provision (with or without change); and
  - 1.3.3 any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that statute or provision or any provision falling within clauses (a) or (b).
- 1.4 A reference to "good faith" in this Agreement means that the applicable party or parties must:
- 1.4.1 not act unconscionably, use misleading or deceptive conduct nor any element of duress (including economic duress or threat of enforcing legal rights);
  - 1.4.2 act honestly, providing where relevant honest and objective appraisals of any facts or circumstances; and
  - 1.4.3 meet with and openly discuss issues where relevant, giving due and proper consideration to the views and needs of the other party as against their own views and needs, all in a professional and responsible manner.
- 1.5 For the avoidance of doubt, good faith does not mean a party is obliged to act contrary to its own interests.
- 1.6 In the case of and to the extent of any conflict, inconsistency or ambiguity between:
- 1.6.1 a Purchase Order and any other part of this Agreement, the provisions of the other part of this Agreement shall prevail, unless the parties have expressly agreed in the Purchase Order that the relevant provision of the Purchase Order should prevail;
  - 1.6.2 one or more Purchase Orders, the last Purchase Order shall prevail, unless the parties have expressly agreed otherwise; and

- 1.6.3 any Quality Agreement, the Specifications and/or Disaster Recovery Plan and any provisions of this Agreement, the provisions of this Agreement shall prevail, unless the parties have expressly agreed in such other document that the relevant provision of that document shall prevail.

## **2. MANUFACTURE AND SUPPLY OF THE PRODUCTS**

- 2.1 During the Term, the Supplier shall Manufacture and supply, and the Customer shall purchase, such quantities of Products as the Customer may order in accordance with the terms and conditions of this Agreement. In no event shall the Customer be liable or be required to compensate the Supplier for any Products delivered in the absence of a Purchase Order.
- 2.2 The Customer shall have the unrestricted right and licence to use and resell the Products throughout the world under its own trade marks and trade names and in the Packaging, whether on their own, or incorporated in other products or sets, for all purposes.

## **3. RELATIONSHIP WITH GROUP COMPANIES**

- 3.1 The Customer may place Purchase Orders for Products to be supplied by the Supplier to the Customer or to any other Group Company and each Group Company may place Purchase Orders for the supply of Products to that particular Group Company.
- 3.2 If any Group Company other than the Customer places a Purchase Order for the supply of Products under this Agreement, then without limiting any right or remedy of the Customer under this Agreement:
- 3.2.1 enforceable by the Customer and that Group Company;
- 3.2.2 any obligation of the Customer under this Agreement may be performed by that Group Company; and
- 3.2.3 references to the Customer in this Agreement shall be deemed to include that Group Company.
- 3.2.4 the provisions of this Agreement shall directly benefit and shall be directly
- 3.3 In the event of any negligence, breach of this Agreement or other act or omission which results in any Loss being suffered by any Group Company:
- 3.3.1 that Loss may be treated by the Customer as if it had been suffered by the Customer, and the Customer will be entitled to recover such Loss from the Supplier (subject to any limitations of the Supplier's liability contained in this Agreement); and
- 3.3.2 that Loss will not be treated as being indirect or consequential simply because it has been suffered by one or more other Group Companies and not by the Customer directly.

## **4. PURCHASE ORDERS**

- 4.1 The Customer (or any Group Company) shall raise Purchase Orders and submit them to the Supplier as required during the Term.
- 4.2 Each Purchase Order shall:
- 4.2.1 be given in either writing; electronic data interchange or any other means of electronic interchange and/or API; or orally. If given orally, shall be confirmed in writing or by email within five (5) Business Days;

4.2.2 specify the type, quantity and Prices of Products ordered; and

4.2.3 the delivery location ("**Delivery Location**").

4.3 Within five (5) Business Days of receipt of the Customer's Purchase Order, the Customer shall assign a PO Number to the Purchase Order, notify the PO Number to the Supplier and the Supplier shall confirm its acceptance of the Purchase Order. The Supplier shall at the same time specify the date by which the Shipments are to be delivered ("**Delivery Date**"), which shall not be more than six (6) months after the date of the Purchase Order.

4.4 Each party shall use the relevant PO Number in all subsequent correspondence relating to the Purchase Order.

4.5 The Customer may at any time prior to despatch of each Shipment amend or cancel a Purchase Order by written notice to the Supplier. If the Customer does so, then its liability to the Supplier shall be as set out in clause 25.3.

4.6 The Supplier shall provide to the Customer on request during the Term reasonable quantities of Product free of charge for the purposes of validation, testing and demonstrating the Product to its customers and potential customers.

4.7 Subject to the terms of this Agreement, the Supplier shall, during the Term, accept all Purchase Orders broadly in line with the Customer's forecast.

## **5. FORECASTS**

5.1 The Customer shall use reasonable endeavours to determine its requirements for the Product. In or around January in each year during the Term the Customer will provide to the Supplier forecasts of its estimated requirements for that calendar year.

5.2 If the Supplier anticipates that it will be unable to meet the Customer's forecasted requirements provided in accordance with this clause 5:

5.2.1 the Supplier shall inform the Customer in writing as soon as possible; and

5.2.2 without limiting any other right or remedy that the Customer may have, the Customer may at its option agree alternative delivery dates for the relevant Products, or obtain from any other person substitute products for the Products which the Supplier anticipates it will be unable to supply.

5.3 It is understood that the forecast constitutes an estimate of the future requirements of the Customer and does not constitute any minimum purchase requirement or any binding commitment by the Customer to purchase Products.

## **6. MANUFACTURE, QUALITY AND PACKING**

6.1 The Supplier shall during the Term maintain sufficient manufacturing capacity and access to Components to enable it to Manufacture and supply Products to meet the Customer's forecasted requirements as forecast by the Customer in accordance with clause 5.

6.2 The Supplier shall Manufacture and supply the Products in accordance with \_\_\_\_\_ and the Quality Standards.

6.3 The Supplier shall comply with all Applicable Laws relating to the Manufacture storage, handling, and delivery of the Products.

6.4 The Products supplied to the Customer by the Supplier under this Agreement shall:



- 6.4.1 conform to the Specifications;
  - 6.4.2 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 the Customer;
  - 6.4.3 be free from defects in design, materials and workmanship and remain so for 36 months after delivery and in the event that this is not achieved the Customer shall be entitled to the appropriate rebate from the Supplier as a result; and
  - 6.4.4 comply with all Applicable Laws.
- 6.5 The Supplier shall:
- 6.5.1 test that each Batch is manufactured in accordance with                      and Applicable Laws and meets the Specifications;
  - 6.5.2 conduct a safety assessment and produce a safety report, as required by EU Regulation                      and its equivalent under other Applicable Laws in the Territory;
  - 6.5.3 set out the results of the tests in the Batch Records; and
  - 6.5.4 provide to the Customer with each Batch delivered by it a certificate of conformity setting out the test results for each Batch certifying that that Batch has been evaluated by the Supplier's quality department and that the Products comply with the Specifications,                      and the Quality Agreement.
- 6.6 The Supplier shall ensure that the Products are properly Manufactured, packed, secured, stored and transported in such a manner as to enable them to reach their destination in good condition.
- 6.7 The Supplier shall maintain the Disaster Recovery Plan throughout the Term, in order to enable it to continue to supply Products to the Customer in the event of a Disaster. The Supplier shall notify the Customer immediately after the Supplier deems an event to be a Disaster. In the event of a Disaster the Supplier shall implement the Disaster Recovery Plan and shall move the affected operations relating to the Products to an alternative facility or facilities in accordance with the Disaster Recovery Plan as expeditiously as possible to ensure uninterrupted supply of Products to the Customer.

## 7. **THIRD PARTY PACKAGING**

- 7.1 To the extent that the Customer supplies, either by way of delivery by a third party or directly from the Customer, any Packaging ("**Third Party Packaging**") to the Supplier, the Supplier shall, within five (5) Business Days of receipt of delivery of any such Third Party Packaging:
- 7.1.1 test such Third Party Packaging to ensure it:
    - (i) conforms to the Specifications and the Quality Agreement; and
    - (ii) complies with all Applicable Laws; and
  - 7.1.2 confirm to the Customer in writing:
    - (i) the number of units and type of Third Party Packaging delivered; and
    - (ii) as to whether such Third Party Packaging conforms to the Specifications and the Quality Agreement and complies with all Applicable Laws and, to the extent

such Third Party Packaging does not satisfy such requirements, the reasons for such assessment and the number of units of Third Party Packaging affected.

- 7.2 If any Third Party Packaging does not satisfy the requirements as notified to the Customer by the Supplier under clause 7.1.2(ii), the Customer shall advise the Supplier as to whether to continue to use the non-compliant Third Party Packaging (to the extent the non-compliance is in respect of minor defects and/or can be resolved whilst still being able to use such Third Party Packaging) or whether the Customer will seek to obtain substitute Third Party Packaging in respect of the non-compliant Third Party Packaging.
- 7.3 The Supplier shall ensure that the receiving bays and the storage areas for the Third Party Packaging are clean and dry and maintained at appropriate temperatures and that the storage of the Third Party Packaging is in accordance with Applicable Laws and
- 7.4 On the date and time of delivery of any Third Party Packaging to the Supplier, title in such Third Party Packaging shall pass to the Customer and risk in such Third Party Packaging shall pass to the Supplier.
- 7.5 The Supplier shall ensure that the Supplier's Insurance includes coverage for any Third Party Packaging for which it has taken delivery.
- 7.6 The Supplier shall, within three (3) Business Days of any receipt of a Purchase Order, delivery of Products using Third Party Packaging and/or of the Customer's request, confirm:
- 7.6.1 the quantity of units and type of Third Party Packaging remaining in storage at the Supplier's premises; and
- 7.6.2 the number of units and type of Third Party Packaging which has been damaged/scrapped through the course of the Manufacturing process since the last notification to the Customer on this subject.
- 7.7 The Customer and the Supplier shall agree in writing in respect of each Product type (but not in respect of each Purchase Order unless otherwise agreed between the Parties) the number of weeks prior to the end of the Manufacturing process of a Product that the Supplier requires any Third Party Packaging to be delivered to the Supplier in order for the Supplier to comply with its obligations under this Agreement, to the extent that the Supplier does not already hold a sufficient quantity of Third Party Packaging for the fulfilment of any applicable Purchase Order in accordance with the quantities notified under clause 7.6 ("**TPP Delivery Date**") and the Customer shall use its reasonable endeavours to procure that any such Third Party Packaging in respect of a Purchase Order shall be delivered to the Supplier by no later than the TPP Delivery Date.

## **8. DELIVERY**

- 8.1 Unless otherwise stated in the relevant Purchase Order the Supplier shall deliver all Shipments Ex Works (Incoterms 2010) to the Delivery Location by the Delivery Date and the Customer shall make all necessary arrangements to load and collect the Products from the Delivery Location. The Supplier shall without charge provide reasonable assistance to the Customer's carrier in loading the Products at the Delivery Location.
- 8.2 The Supplier shall not deliver any Shipment more than five (5) Business Days in advance of the Delivery Date without the prior written consent of the Customer.
- 8.3 The Supplier may not deliver Shipments by instalments other than as specified in the Purchase Order without the Customer's prior written consent. Where delivery of such other

instalments is agreed, references in this Agreement to Shipments shall, where applicable, be read as references to such other instalments.

8.4 If a Shipment is not delivered on the specified Delivery Date or in advance of the Delivery Date in accordance with clause 8.2, then, without limiting any other right or remedy the Customer may have, the Customer may:

8.4.1 refuse to take any subsequent attempted delivery of the Shipment; and

8.4.2 obtain substitute products from another manufacturer and/or supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute products; and/or

8.4.3 claim liquidated damages in accordance with Schedule 4 provided that the Delay Period shall be until such time as the substitute Products are obtained; and/or

8.4.4 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Shipment on the Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering Shipment to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.

8.5 Each Shipment shall be accompanied by a delivery note from the Supplier showing the PO Number, the date of the Purchase Order, the type and quantity of Products included in the Shipment and, where relevant, the outstanding balance of Products covered by the same Purchase Order remaining to be delivered.

8.6 If the Supplier requires the Customer to return any Packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Shipment, and any such returns shall be at the Supplier's expense.

## **9. TITLE AND RISK**

9.1 The risk in Products delivered to the Customer shall pass to the Customer on delivery which, for the avoidance of doubt, shall be the date and time at which the Customer takes collection of the Products.

9.2 Title to Products delivered to the Customer shall pass to the Customer on the earlier of receipt of payment by the Supplier or delivery of the Products to the Customer.

## **10. REJECTED PRODUCTS**

10.1 If any Products delivered to the Customer do not comply with clause 6.4, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Customer may have, the Customer may:

10.1.1 reject those Products by giving notice to the Supplier and:

10.1.2 require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within thirty (30) days of being requested to do so in writing or require the Supplier to reimburse the Customer for the full price of the rejected Products; and/or

10.1.3 claim liquidated damages in accordance with Schedule 4; and/or

10.1.4 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of this Agreement.

- 10.2 The Customer shall make available to the Supplier any Products rejected pursuant to clause 10.1 for collection in accordance with the Supplier's instructions.
- 10.3 In the event that the Customer rejects Products pursuant to clause 10.1, it shall not be liable for any invoice in respect of the rejected Products and shall be entitled to a refund of any monies paid to the Supplier in respect of such rejected Products.
- 10.4 The Customer's rights and remedies under clause 10 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Agreement by the Sale of Goods Act 1979.
- 10.5 The terms of this Agreement shall apply to any repaired or replacement Products supplied by the Supplier.
- 10.6 If the Supplier fails promptly to repair or replace rejected Products in accordance with clause 10.1.2, the Customer may, without affecting its rights under clause 10.1.4, obtain substitute products from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so, provided that the Rejection Period shall be until such time as the rejected Products are repaired or replaced by that third party.
- 10.7 If the parties dispute whether any Products comply with clause 6.4, either party may refer the matter to an independent expert acceptable to both parties (or, in the case of failure to agree, appointed by the President for the time being of the Law Society of England and Wales). The expert will act as an expert and not an arbitrator and his decision will be binding on both parties (except in the case of fraud or manifest error). The parties will share the expert's costs equally.

## **11. PRODUCT RECALL AND PRODUCT LIABILITY**

- 11.1 If the Customer is the subject of a request, claim, 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 Each party shall give prompt notice by telephone (to be confirmed in writing) to the relevant contact of the other party upon discovery that the Product should be recalled or corrected, or may be required to be recalled or corrected. The Supplier agrees to provide details of any investigation carried out in relation to the Manufacture and supply of the Products and report such investigation to the Customer as soon as reasonably possible.
- 11.3 The decision to initiate a recall or to take some other corrective action, if any, shall be made and implemented by the Customer or its customer as appropriate. The recall procedure shall be set out in the Quality Agreement.
- 11.4 The Customer shall have responsibility for handling customer returns of the Products.
- 11.5 Where the recall of Product is caused by a defective Product or to the extent any recall results from a breach of this Agreement by the Supplier, the cost or relevant portion of cost of any Manufacture and supply of replacement Product including Manufacture and supply of replacement materials will be borne by the Supplier and the Supplier will be responsible for its own costs in providing assistance to the Customer in relation to any Product recall. Where the recall of Product is not caused by a defective Product or does not result from a breach of this Agreement by the Supplier, the costs of supply of any replacement Product will be borne by the Customer and the Customer shall also reimburse the Supplier for any

reasonable costs incurred by the Supplier in providing assistance to the Customer in relation to any Product recall.

- 11.6 Should the Supplier become aware of any information or changes which may impact on or affect the registration of the Product with any regulatory authority, it shall notify the Customer as soon as reasonably possible and no later than nine (9) months' prior to the launch of the Product in the market by the Customer.
- 11.7 If any claim is made against the Customer, arising out of or in connection with: (a) the Manufacture of; or (b) any defect in; or any use or application of the Products, the Supplier shall indemnify the Customer against all damages or other compensation awarded against the Customer in connection with the claim or paid or agreed to be paid by the Customer in settlement of the claim and all legal or other expenses incurred by the Customer in or about the defence or settlement of the claim
- 11.8 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, comprise or defend the claim and any proceedings in respect of the claim, subject to the Customer being indemnified and secured to its reasonable satisfaction.

## **12. PRODUCT PRICES**

- 12.1 The Product Prices for a period of twelve (12) months from the Effective Date shall be the prices set out in Schedule 2. The Product Prices for subsequent years shall be determined in accordance with clause 12.4.
- 12.2 The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Products.
- 12.3 The Product Prices are inclusive of the costs of packaging, insurance and carriage of the Products.
- 12.4 The parties shall meet prior to two (2) months before each anniversary of the Effective Date during the Term to review and, where appropriate, agree changes to the Product Prices ("**Product Price Review**") and to discuss possible improvements to Manufacturing processes and resulting cost savings, and how such savings may be shared between the parties. Agreed price changes shall take effect on the anniversary of the Effective Date. In agreeing Product Prices for the following year, the parties shall have regard to the following factors:
- 12.4.1 changes to the Supplier's costs of manufacturing the Products;
  - 12.4.2 the volumes of Products ordered by, and supplied to, the Customer;
  - 12.4.3 11.4.3 the prices at which comparable products are supplied by other suppliers in the open market; and
  - 12.4.4
  - 12.4.5 11.4.4 any cost reductions achieved by the Supplier since the last Product Price Review, to the extent that they have not already been taken into account in the Product Prices.
- 12.5 In no event shall prices for the Products increase (individually or in the aggregate) by more than three percent (3%) of the Product Price for the previous twelve (12) month period unless otherwise agreed between the parties.

12.6 If the Product Prices for a year are not agreed by the anniversary of the Effective Date for the upcoming year of the Term, the Product Prices in force during the previous year shall apply pending agreement or determination of the new Product Prices. Once the new Product Prices are agreed or determined, they shall apply with effect from the date on which they are agreed, or such future date as the parties may agree.

12.7 The Supplier shall provide all such evidence as the Customer may reasonably request in order to verify:

12.7.1 invoices submitted by the Supplier; and

12.7.2 cost reductions achieved by the Supplier (including the dates on which cost reductions were achieved).

12.8 In addition, the Supplier shall, on request, allow the Customer to inspect and take copies of (or extracts from) all relevant records and materials of the Supplier relating to the Manufacture and supply of the Products as may be reasonably required in order to verify such matters.

### **13. TERMS OF PAYMENT**

13.1 Unless otherwise agreed the Supplier shall be entitled to invoice the Customer for each Shipment at any time after delivery. Each invoice shall quote the relevant PO Number.

13.2 The Customer shall pay each properly delivered invoice in full within forty-five (45) days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.

13.3 If any amount payable pursuant to or in connection with this Agreement is not paid when it is due, the Supplier may charge the Customer interest on the amount due at the rate of two per cent (2%) per annum over the base rate of the Bank of England from time to time calculated on a daily basis for the period from the due date to the date of actual payment in full, both before and after any judgment. The parties agree that such interest is a substantial remedy for late payment of any sum payable pursuant to or in connection with this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

13.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. The Supplier's obligations to supply the Products shall not be affected by any payment dispute.

### **14. PRODUCT CHANGES**

14.1 The Supplier shall provide the Customer with at least nine (9) months' written notice ("**Affected Product Notice**") of any change or discontinuation of a Product ("**Affected Product**") including a detailed description of any pending change and the reasons for the change or discontinuation. Changes for purposes of Affected Products include but are not limited to changes in Components or processes used in Manufacturing the Product.

14.2 The Supplier shall, as soon as practicable following a request from the Customer, provide to the Customer a sample of sufficient quantity (as determined in the Customer's sole discretion) for the Customer to perform a reliability analysis on any changed Affected Product.

14.3 For a period beginning on the date of the Customer's receipt of the Affected Product Notice and ending (i) on the date on which the change or discontinuation of the Product is to be

implemented or (ii) nine (9) months from such receipt of the Affected Product Notice, whichever is longer, (the "**Product Transition Period**"), the Customer may purchase, by placing one or more Purchase Orders, any quantity of Affected Products without any increase to the Purchase Price in effect at the date of the Affected Product Notice. The Supplier shall at its own expense and risk, when directed by the Customer, store any of the Affected Products ordered during the Product Transition Period and deliver such Affected Products as requested by the Customer.

- 14.4 Upon discontinuation of any Product or termination of this Agreement for any reason other than termination by the Supplier under clause 25.6, or if the Supplier is otherwise unable to Manufacture or supply Products within the timeframes specified in this Agreement for any period of three (3) months or more, the Supplier shall take all steps that are necessary and desirable as reasonably requested by the Customer to allow the Customer to produce or procure a continued supply of any Product affected by such discontinuation, termination or inability, and to secure all rights necessary to Manufacture and use such Product ("**Facilitation**"). Such Facilitation shall include, but shall not be limited to, making available in written form a complete set of all Specifications, process information, and know-how relating to such Products as requested by the Customer. In the event that any third party is involved during the Facilitation, the Supplier shall ensure that such third party executes a confidentiality agreement that contains substantially the same obligations of confidentiality as are set out in clause 24 prior to disclosure of any Confidential Information to such third party and that such third party's use of any Confidential Information is restricted to the Facilitation and supply of Products, if any, to the Customer.

## 15. **DOCUMENTATION AND RECORDS**

- 15.1 The Supplier shall maintain all documentation and records as are required under the Quality Agreement or otherwise for compliance with Applicable Laws. In particular, the Supplier shall maintain a contemporaneous record of all testing and quality procedures used in relation to any Batch. The Supplier will not make any changes to Batch Records or other documentation required under the Quality Agreement after the date of issue to the Customer.
- 15.2 The Supplier shall provide Customer and its representatives with access to all documentation and records relevant to the Product and supply of such Product at all reasonable times on Business Days and upon not less than forty eight (48) hours' notice from the Customer, including the right to enter its premises for the purposes of such inspection. Where such documentation is located on the premises of a third party, Supplier shall procure that the Customer has equivalent rights of entry and inspection to such documentation.
- 15.3 The Supplier shall maintain all documentation and Batch Records for a period of 6 years from expiry or termination of this Agreement or for such other period as specified in the Quality Agreement.

## 16. **PERFORMANCE REVIEW MEETINGS**

The parties shall conduct performance review meetings ("**Review Meetings**") quarterly (or at such intervals or times as may be specified in advance in writing by the Customer) at a location to be designated by the Customer in advance of the meeting. The Supplier is expected to participate in all Review Meetings, at its cost and expense. At each Review Meeting, the Supplier agrees to provide the Customer with performance metrics reports as required by the Customer. At the Review Meetings the Supplier also agrees to address any performance issues between the parties relating to this Agreement and also to suggest areas of improvement for performance under this Agreement.

## 17. AUDIT AND INSPECTION

- 17.1 The Supplier shall permit the Customer and its representatives and any regulatory authorities to inspect and audit the facilities and any equipment used in the performance of the Manufacture and/or supply of the Products, and any other processes associated with the Manufacture and/or supply of the Products. During such audits, the Supplier will provide full access to all documents, records, procedures and personnel as may be required for completion of the audit. Samples may also be taken for analysis. Such right of audit and inspection shall last during the Term and for a period of six (6) years following expiry or termination of this Agreement.
- 17.2 Any audit shall where possible be carried out within normal business hours and on provision of reasonable notice.
- 17.3 Where any audit also involves third party sub-contractors of the Supplier, the Supplier shall procure an equivalent right of audit and inspection.
- 17.4 The right to audit and inspect under clause 17.1 may also include the right for inspection of information security systems used by the Supplier to perform the Manufacture and/or supply of the Products to ensure compliance with Applicable Laws. Any such audit shall be supervised by the Supplier and the Customer and its representatives shall only be permitted access to those parts of the information security systems used in the performance of the Manufacture and/or supply of the Products. Any inspections, checking, tests, approval or acceptance given on behalf of the Customer by its employees, servants or agents in relation to the Manufacture and/or supply of the Products shall not relieve the Supplier of its obligations assumed under this Agreement.
- 17.5 Any audits or inspections under this clause 17 shall be conducted at the Customer's expense, provided that in the event that an audit or inspection reveals:
- 17.5.1 any overcharge equal to or in excess of 5% of the total Product Price for the period of the audit; or
- 17.5.2 any material breach of this Agreement by the Supplier,
- the Supplier shall bear the cost of the audit or inspection (and shall refund any applicable overcharge).
- 17.6 Where any breach of Applicable Laws is identified during any audit or inspection (whether carried out by or on behalf of the Customer or by any regulatory authority), the Supplier shall promptly correct such breach (in any event within any timescales set by a regulatory authority for correction) and shall confirm in writing to the Customer that such breach has been corrected.

## 18. INSURANCE

- 18.1 During the Term and for six (6) years thereafter, the Supplier shall maintain at its own cost the following insurance policies (the "**Insurance**") with limits of indemnity no less than that specified for each type:
- 18.1.1 Public and Product Liability or equivalent insurance with limits of at least £5 million per occurrence and £10 million annual aggregate; and
- 18.1.2 Employers Liability with limits of at least £5 million per incident.
- 18.2 The Customer shall not be liable for the payment of any premium or assessments with respect to any of the Insurance required under this Agreement. The Customer and its



successors and assigns (and their officers, directors, employees, agents, and designees) shall be named as additional insured relative to the Supplier's activities on or about the Customer's premises. The Insurance shall be primary for all purposes to other insurance coverage, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, as regards any and all liability, loss, claims, damages or expense arising out of the negligence or alleged negligence of the Supplier.

- 18.3 The Supplier shall ensure that its insurance coverage will fully extend to the activities of all Personnel at any premises or facility of the Customer.
- 18.4 Upon execution of this Agreement and upon the Customer's request, the Supplier shall provide the Customer with certificates evidencing the Insurance. Each such certificate shall provide that coverage shall not be cancelled without at least thirty (30) days' written notice to the Customer.
- 18.5 The Supplier shall give the Customer at least thirty (30) days' prior written notice of any cancellation which is not due to failure to pay a premium, or replacement of the Insurance if such replacement coverage diminishes the scope of the Supplier's existing coverage. If the Supplier receives actual or constructive notice that the Insurance is to be terminated by an insurer due to failure to pay a premium, then the Supplier shall give the Customer notice of such termination within two (2) business days after receiving such notice.
- 18.6 Provided such coverage is reasonably commercially available, the Supplier's Insurance will be procured on an occurrence basis. When only claims-made coverage is available, the Supplier will, for a period of not less than three (3) years following expiration or termination of this Agreement, either renew and maintain such coverage or provide an extended reporting endorsement (tail coverage), provided such coverage is reasonably commercially available.

## **19. SUPPLIER UNDERTAKINGS AND WARRANTIES**

- 19.1 The Supplier undertakes that all services and obligations performed pursuant to this Agreement, including by any Personnel, shall be performed in accordance with the highest professional standards of workmanship and in compliance with all Applicable Laws.
- 19.2 The Supplier warrants that it is authorised to enter into this Agreement; no provision of this Agreement is in conflict with any other agreement to which the Supplier is a party or obligation which the Supplier owes to any third party; and there is nothing to prevent or restrict in any manner the Supplier from granting the rights, title and other interests granted by the Supplier under this Agreement.
- 19.3 The Supplier warrants that none of the Manufacture of the Products, their supply to the Customer, their use, keeping, importation into any country or their sale or supply or offer for sale or supply in any country by the Customer, will infringe the Intellectual Property Rights of any third party.

## **20. REGULATORY APPROVAL**

- 20.1 The Supplier shall:
- 20.1.1 obtain and maintain in force during the Term all required licences, permits, certificates, authorisations and approvals from any regulatory authority necessary for the Manufacture of the Products in accordance with this Agreement; and
  - 20.1.2 draw up and maintain a product information file or equivalent regulatory dossier required under Applicable Laws for each Product containing a safety assessment

and product safety report for each Product and full list of Components of each Product, and provide the Customer with all documentation and information in its possession relating to the Products and their Manufacture which may be required for the Customer to obtain any licences, permits, certificates, authorisations or approvals necessary for the commercialisation, marketing, sale, exploitation, importation and distribution of the Products throughout the world. The Supplier will provide the Customer with a copy of the product information file or equivalent regulatory dossier within 72 hours of its request made at any time.

20.2 At least eighteen (18) weeks prior to the launch of any new Product by the Customer the Supplier shall provide to the Customer:

20.2.1 a certificate in a form acceptable to the Customer that the Product does not contain any animal-derived ingredients;

20.2.2 a certificate of analysis for the Product with the correct names for all relevant Components; and

20.2.3 a material safety data sheet for the Product.

20.3 The Supplier shall at all times keep the Customer informed of all regulatory requirements for the Products in the Territory and shall notify the Customer in writing of any forthcoming changes to such requirements in any part of the Territory as soon as they become known.

20.4 If any change is at any time required by a regulatory authority to any Product in order to obtain or maintain any licence, permit, certificate, authorisation or approval, the parties shall consult and cooperate in good faith concerning the nature of such change and the feasibility of effecting the same.

20.5 The Supplier shall keep records of the Manufacture and delivery of the Products, and retain samples of such Products as are necessary to comply with manufacturing regulatory requirements applicable to the Supplier, as well as to assist with resolving Product complaints and other similar investigations. Copies of such records and samples shall be retained for a period of six years following the date of Product expiry, or longer if required by law provided that the Supplier will not dispose of such records and samples without the Customer's consent and the Customer shall have the right to access all records and samples.

## 21. INDEMNITY

21.1 The Supplier shall, to the maximum extent permitted by law and at its sole cost and expense, defend, indemnify, and hold harmless the Customer and its Affiliates, and their respective officers, directors, agents and employees (each an "**Indemnified Party**") from and against any Loss suffered or incurred in connection with any claim, demand, action or proceedings made, brought or threatened against any of them by any third party ("**Claim**") as a result of or in connection with:

21.1.1 the Manufacture or supply of or, any defect, in the Products including, but not limited to, a Product recall or product liability claim;

21.1.2 any negligence, misconduct or breach of this Agreement (including any related Schedule or Purchase Order) or of any warranty therein by the Supplier or any Personnel or representative of the Supplier;

21.1.3 any non-compliance with any Applicable Laws by the Supplier or any Personnel or representative of the Supplier;

- 21.1.4 any alleged or actual infringement of any third party Intellectual Property Rights or other rights by the Product or arising out of the importation, use, keeping, sale or supply or offer for sale or supply of the Product by any Indemnified Party.
- 21.2 The indemnities in clause 21.1 will not apply to the extent that any Claim is based on or arises directly from or in connection with any negligence, wilful misconduct or breach of this Agreement by the Indemnified Party.
- 21.3 Each party shall give the other party prompt written notice of any fact coming to its attention which may give rise to a claim for indemnification under this Agreement, provided that the Customer's failure to promptly notify shall not relieve the Supplier of its obligations hereunder to the extent that the Supplier is not materially prejudiced by such failure. The Supplier may, but is not obliged to, assume the defence of any Claim and to such effect may appoint legal counsel responsible for such defence, provided that the Indemnified Party may elect to be represented, at its own expense, in such Claim by counsel of its own choosing. The Customer and the Supplier shall cooperate fully in connection with all matters related to the defence of any such Claim irrespective of which party is conducting the defence.
- 21.4 The Supplier will not make any offers of settlement nor enter into any settlement agreements that would restrict the use of the Products by the Indemnified Parties or subject the Indemnified Parties to any additional obligation with respect to the Products without their prior written consent, such consent not to be unreasonably withheld.

## **22. LIMITATION OF LIABILITY**

- 22.1 Subject to clause 22.3 and except under the indemnities in clause 21.1, neither party shall have any obligation or liability to the other party for any exemplary, punitive, incidental, special or consequential damages (including but not limited to loss of profits, revenue, income, business, anticipated savings, business, data or goodwill) whether based on contract, tort (including negligence), strict liability or any other theory or form of action, even if such other party has been advised of the possibility thereof.
- 22.2 Subject to clause 22.3 and except under the indemnities in clause 21.1, the aggregate liability of each party to the other for all and any breaches of this Agreement, for any negligence or arising in any other way out of the subject-matter of this Agreement, will not exceed the total of five times the amount paid or owed by the Customer to the Supplier under this Agreement.
- 22.3 Nothing in this Agreement limits or excludes either party's liability for death or personal injury; any fraud or wilful misconduct by that party or any of its personnel; any sort of liability that, by law, cannot be limited or excluded; any breach of clauses 24 or 26; or any liability for liquidated damages under clauses 8.4.3 or 10.1.3 and Schedule 4.

## **23. INTELLECTUAL PROPERTY**

- 23.1 The Supplier acknowledges that it has not, nor shall it acquire, any right or interest in any Customer Intellectual Property or any other Intellectual Property Rights owned by the Customer except as expressly provided in this Agreement. The Customer acknowledges that it has not, nor shall it acquire, any right or interest in any Supplier Intellectual Property or any other Intellectual Property Rights owned by the Supplier except as expressly provided in this Agreement. Each party agrees not to use any Intellectual Property Rights of the other except as expressly licensed under this Agreement or as required for the performance of its obligations under this Agreement.

- 23.2 As between the parties, the Intellectual Property Rights in all Supplier Intellectual Property shall belong to the Supplier, and the Intellectual Property Rights in all Customer Intellectual Property shall belong to the Customer, in each case whether existing on the Effective Date or arising during the Term. Each party shall enter into any assignments and execute such other documents as are necessary to vest such Intellectual Property Rights accordingly.
- 23.3 The Customer hereby grants to the Supplier a non-exclusive, non-transferable licence to use, and have used by any Sub-contractor, the Customer Intellectual Property for the purpose and to the extent necessary to enable the Supplier to comply with its obligations under this Agreement.
- 23.4 The Supplier undertakes that neither it nor any of its Affiliates will, during the Term or for a period of two (2) years after termination of this Agreement, Manufacture, sell or supply, or license any other person to Manufacture, sell or supply, any product which makes use of or incorporates any of the Customer Intellectual Property or any formulation, packaging or labelling owned by the Customer which is or might be regarded by a consumer as similar or equivalent in any respect to, or might be associated in the minds of a consumer with, any of the Products.
- 23.5 Where the Supplier applies any of the Trade Marks to Packaging or Labelling of the Products it shall strictly follow the Customer's instructions and directions as to the form and manner of such application and shall comply with any brand guidelines provided by the Customer. The Supplier shall have no right to use or apply any of the Trade Marks except for the purpose of Manufacturing Products in accordance with the Specification and this Agreement, and acquires no rights in the Trade Marks or in the get-up of any of the Products or their Packaging or in the goodwill associated with their use or sale. The Supplier shall promptly notify the Customer in writing of any infringement or misuse of any of the Trade Marks of which it becomes aware during the Term. The Supplier shall not apply for, or obtain, registration of any trade mark in any country which consists of, or comprises, or is confusingly similar to, any of the Trade Marks or which incorporates the get-up or appearance of any of the Products or their Packaging.

## 24. CONFIDENTIALITY

- 24.1 Each party ("**Receiving Party**") shall maintain as confidential and shall not disclose to a third party, copy, nor use for purposes other than the performance of this Agreement, any information which relates to another party's or its Affiliates' ("**Disclosing Party**") business affairs, financial data, pricing, customer lists, projects, economic information, systems, plans, procedures, operations, techniques, technology, unpublished patent applications, trade secrets, know-how, inventions, technical data or specifications, testing methods, research and development activities, clinical studies (including information related to the participants of such studies), marketing strategies, the terms of this Agreement or other confidential or proprietary information (hereinafter "**Confidential Information**"), and each agrees to protect that Confidential Information with the same degree of care it exercises to protect its own Confidential Information (but in no event less than a reasonable standard of care) and to prevent the unauthorised, negligent, or inadvertent use, disclosure, or publication thereof.
- 24.2 Each party may disclose Confidential Information of another party only to its own employees, consultants or advisors having a need to know for the purposes of this Agreement (which may include temporary and contract employees, attorneys, technical experts and accountants), provided always that such employees, consultants and advisors have signed a non-disclosure agreement with similar and sufficient clauses protecting the

disclosure of confidential information as contained herein or are otherwise bound by such a duty of confidentiality.

24.3 In this Agreement, the Customer is the Disclosing Party and the Supplier is the Receiving Party with respect to the Customer Intellectual Property, whether or not that Customer Intellectual Property was first disclosed to it by the Supplier.

24.4 The obligations set forth in clause 24.1 shall not apply to any Confidential Information which the Receiving Party can demonstrate:

24.4.1 is or becomes a matter of public knowledge through no fault of the Receiving party;

24.4.2 except for any Customer Intellectual Property, was rightfully in the Receiving Party's possession in a complete and tangible form before it was received from the Disclosing Party;

24.4.3 is furnished to the Receiving Party on a non-confidential basis from a third party, provided that such third party is not bound by an obligation of confidentiality to the Disclosing Party with respect to such Confidential Information;

24.4.4 except for any Customer Intellectual Property, is independently developed by the Receiving Party prior to receipt of the Confidential Information; or

24.4.5 is required to be disclosed to comply with applicable laws but only to the extent and for the purposes of such required disclosure and provided that:

(i) the Disclosing Party is promptly notified by the Receiving Party;

(ii) the Receiving Party takes all reasonable actions to obtain confidential treatment for such information and, if possible, to minimize the extent of such disclosure; and

(iii) the Receiving Party takes all reasonable measures to ensure, as far as it is possible to do so, the continued confidentiality of any Confidential Information so disclosed.

24.5 Upon any breach of a party's obligations under this clause, such party shall immediately notify the other, regardless of whether the breaching party deems such breach to be immaterial.

24.6 It is understood and agreed that any breach of this clause 24 may cause irreparable damage and, therefore, the injured party shall have the right to seek equitable and injunctive relief in addition to damages (including reasonable legal fees and expenses) incurred in connection with such breach or by law.

## **25. TERM AND TERMINATION**

25.1 This Agreement shall commence on the Effective Date and shall remain in force for an indefinite period unless or until it is terminated in accordance with the terms of this Agreement or under the general law (the "**Term**").

25.2 The Customer may terminate this Agreement at any time on at least three (3) months' written notice to the Supplier.

25.3 In the event that the Customer exercises its rights under clause 4.5 or 25.2 of this Agreement, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Purchase Order up until the date of receipt of the notice of cancellation or termination, except where the cancellation or

termination results from the Supplier's failure to comply with its obligations under this Agreement. Unless the Customer chooses to purchase any unused raw materials purchased for the production of the affected Purchase Order, all reasonably incurred costs relating to raw materials shall be reimbursed by the Customer to the extent that such raw materials cannot be used for the production of Products under other Purchase Orders, or for other clients of the Supplier.

- 25.4 The Supplier may terminate this Agreement at any time on at least twelve (12) months' prior written notice to the Supplier.
- 25.5 The Supplier shall, if so instructed by Customer, continue to provide services and supply Products under the terms of this Agreement during any notice period.
- 25.6 If one party materially defaults in the performance of its obligations under this Agreement and, if it is capable of remedy, such default is not remedied within thirty (30) days of its receipt of written notice from the non-defaulting party (or, in the reasonable opinion of the non-defaulting party, significant progress is not made towards resolving such default), then the non-defaulting party shall have the right to terminate this Agreement, effective at the end of such 30 day period, and avail itself of any and all rights and remedies to which it may be entitled by law or in equity. In the event of a material default or breach which is not capable of remedy, then the non-defaulting party may terminate this Agreement with immediate effect upon written notice. Notwithstanding the foregoing, the Supplier shall have no right to terminate: (1) Purchase Orders which are not subject to the breach, or (2) the Agreement if the Customer is only in breach of one or more Purchase Orders.
- 25.7 Either party may terminate this Agreement effective immediately upon written notice to the other party if any step, action, application or proceeding is taken by or in respect of the other party in relation to the whole or any part of its undertaking for a voluntary arrangement or composition or reconstruction of its debts (including any voluntary arrangement as described in the Insolvency Act 1986 or any analogous step, action, application or proceeding taken by or in respect of either party in a different jurisdiction); or if the other party has a receiver (administrative or otherwise), administrator, liquidator or any encumbrancer or security holder take possession of or be appointed over it or any of its assets (including the appointment of an analogous person or official in a different jurisdiction); or if the other party has any distress, execution or other process levied or enforced in any jurisdiction (and not discharged within 7 days) upon the whole or substantially all of its assets; or if the other party ceases or threatens to cease to carry on business or becomes unable to pay its debts or suffers any analogous event in any jurisdiction.
- 25.8 The Customer may terminate this Agreement or any individual Purchase Order with immediate effect by giving written notice to the Supplier in the event that any relevant regulatory authority approval required in connection with the Products is not granted or is withdrawn, or if in Customer's opinion, any safety issue arises in connection with the Products.
- 25.9 Following expiry or termination of the Agreement for any reason, the licence granted in clauses 23.3 shall automatically terminate, and the Supplier shall destroy or return to the Customer, at the Customer's sole discretion, any materials supplied by the Customer and all of Customer's Confidential Information which are in its possession or under its control (including all copies) and, on request, certify in writing that it has complied with the requirements of this clause 25.9. Termination shall not affect the rights or obligations of either party accrued as of the effective date of termination or that may arise subsequently with respect to transactions initiated or completed prior to the effective date of termination.

25.10 **Miscellaneous.** Termination, expiration or abandonment of this Agreement by any means or for any reason shall be without prejudice to the rights and remedies of either party with respect to any antecedent breach of any of the provisions of this Agreement.

25.11 **Survival.** All rights and obligations of the parties set forth herein that expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement until they are satisfied or by their nature expire, and shall bind the parties and their legal representatives, successors, and permitted assigns. Without limiting the foregoing, clauses 2.2, 10.2, 14.4, 15.3, 17, 18, 19, 20, 21, 22, 23.4, 24, 25.9, 25.10, 25.11, and 29, shall survive termination of this Agreement.

## 26. ANTI-BRIBERY AND CORRUPTION AND ETHICAL CONDUCT

### 26.1 UK Bribery Act

26.1.1 The Supplier undertakes to:

- (i) comply with all applicable laws, statutes, regulations, Code of Conduct and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- (ii) maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- (iii) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement;
- (iv) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of its organisation or acquires a direct or indirect interest in it (and it warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- (v) within six months of the date of this Agreement, and then annually, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 26.1 by the Supplier and all persons associated with it under clause 26.1.2. The Supplier shall provide any supporting evidence of compliance as the Customer may reasonably request.

26.1.2 The Supplier undertakes to ensure that any person associated with it who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from that person terms equivalent to those imposed on the Supplier in this clause 26.1 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by these persons of the Relevant Terms, and shall be directly liable to the other party for any breach by these persons of any of the Relevant Terms.

26.1.3 For the purpose of this clause 26.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) and section 8 of that Act respectively. For the purposes of this clause 26.1, a person associated with the Supplier includes but is not limited to any sub-contractor of the Supplier.

## 26.2 **U.S. Foreign Corrupt Practices Act ("FCPA")**

- 26.2.1 The Supplier represents and warrants that it (i) has knowledge and understanding of the FCPA, and undertakes that no principal, partner, officer, director or employee of the Supplier is or will become an official of any governmental body of any country (other than the U.S.) in which the Supplier supplies Products to the Customer or performs services under this Agreement during the Term; (ii) has never been subject to any disciplinary action relating to fraud or corruption by any governmental or regulatory authority and (iii) has never been the subject of litigation involving allegations of fraud or corruption.
- 26.2.2 The Supplier covenants that it will not offer or give any gratuity to induce any person or entity to enter into, execute or perform the Agreement or any other agreement with the Customer.
- 26.2.3 The Supplier agrees that it shall not, in the conduct of its performance under this Agreement, and with regard to any funds, assets, or records relating thereto, offer, pay, give, or promise to pay or give, directly or indirectly, any payment or gift of any money or thing of value to (i) any non-U.S. government official to influence any acts or decisions of such official or to induce such official to use his or her influence with the local government to effect or influence the decision of such government in order to assist the Supplier in its performance of its obligations under this Agreement or to benefit the Customer; (ii) any political party or candidate for public office for such purpose; or (iii) any person, if the Supplier knows or has reason to know that such money or thing of value will be offered, promised, paid, or given, directly or indirectly, to any official, political party, or candidate for such purpose.

## 26.3 **Anti-Slavery and Human Trafficking Laws and Policies**

- 26.3.1 In performing its obligations under this Agreement, the Supplier shall:
- (i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015; and
  - (ii) have and maintain throughout the Term its own policies and procedures to ensure its compliance; and
  - (iii) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - (iv) include in its contracts with its Sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.

## 26.4 **Ethical Trade**

In performing its obligations under this Agreement the Supplier shall comply and shall ensure that its Sub-contractors comply in full with all other ethical conduct, and ethical trading policies and procedures applied from time to time by the Customer that are made known to it.

- 26.5 Any breach by the Supplier of this clause 26 will be deemed a material breach of this Agreement that is not capable of remedy and will entitle the Customer to terminate this Agreement with immediate effect pursuant to clause 25.6. In addition, the Customer will



have a lawful claim against the Supplier for any funds and/or the value of property paid by the Supplier in breach of this provision; and the Supplier will automatically surrender any claim for fees and other payments due under this Agreement.

## **27. FORCE MAJEURE**

27.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this Agreement so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. After ten (10) consecutive days of suspension of a party's obligations under this Agreement due to a Force Majeure Event, the other party may, at its sole discretion, terminate this Agreement without further liability.

27.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

27.2.1 notify the other party of the nature and extent of such Force Majeure Event; and

27.2.2 use all reasonable endeavours to remove any such causes and resume performance under this Agreement as soon as feasible.

## **28. ASSIGNMENT AND SUBCONTRACTING**

28.1 Assignment. Neither party may assign or transfer this Agreement or any Purchase Order covered hereunder, in whole or in part, or any interest arising under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Customer may without consent assign all of its rights and obligations under this Agreement to an Affiliate, to any successor to the whole of its business or to that part of its business to which the Products relate, or to any licensee of the Products.

28.2 Sub-Contracting. Should the Supplier wish to subcontract all or any of its obligations under this Agreement to a Sub-contractor, the Supplier agrees that it shall only engage a Sub-contractor for whom the Supplier has received the Customer's prior written authorisation. The Supplier shall incorporate into the terms of any sub-contract with a Sub-contractor obligations in accordance with the provisions of this Agreement including provisions relating to, confidentiality, and audit rights, and shall ensure that the Sub-contractor provides the benefit of such obligation to the Customer. The Supplier, if so required by the Customer, shall provide to the Customer an extract from the sub-contract to establish that it has complied with its obligations under this clause 28.2. The subcontracting of any part of the obligations under this Agreement by the Supplier shall not relieve the Supplier from any of its obligations under the Agreement and any applicable Order, and the Supplier shall be fully responsible for the work and services performed by the Sub-contractor.

## **29. MISCELLANEOUS**

29.1 **Further Assurance.** Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Agreement and the transactions contemplated by it.

29.2 **Severability.** To the extent that any clause, term or provision of this Agreement shall be judged to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the validity or enforceability of the balance of such clause, term or provision or any other clause, term or provision hereof. The remaining provisions of this Agreement will remain binding and enforceable, and shall be interpreted so as best to

reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions will be deemed replaced with valid and enforceable provisions that achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

29.3 **Waiver.** The failure by a party at any time to enforce any of the provisions of this Agreement shall not be deemed to be a waiver of such or any other provision hereof. No waiver of any portion of this Agreement will be effective unless in writing signed by the waiving party. No waiver of any breach of this Agreement will constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

29.4 **Relationship of the Parties.** The parties acknowledge and agree that in performing services under this Agreement, the Supplier shall be acting solely as an independent contractor, and neither the Supplier nor any of its affiliates, or Personnel shall be deemed to be employees of the Customer for any purpose. Neither the Supplier nor the Customer shall have the authority to bind, commit or incur any liability on behalf of the other party or to otherwise act in any way as an agent, representative or partner of the other party.

29.5 **Publicity.** Both parties agree to submit to one another all proposed advertising and other promotional materials relating to their relationship in which either party's name is mentioned or language is used from which the connection with that party can be inferred. Both parties agree not to publish or use such advertising or promotional materials without the prior written consent of the other party. The Supplier shall not provide Customer's name to current or prospective customers as a reference without first receiving prior written approval from the Customer for each such customer reference, and the Supplier shall not without the Customer's prior written consent disclose to any third party (including any other customer or prospective customer) that it manufactures the Products, or any products, for the Customer.

29.6 **Notices.** All notices under this Agreement shall be in writing, properly addressed and shall be deemed to have been duly given or received upon the earlier of (i) actual receipt, (ii) the date of confirmed delivery according to the records of the postal service if sent by registered or certified mail, return receipt requested, or (iii) the date of confirmed delivery according to the records of a commercially recognized express courier with tracking capabilities or (iv) the date of confirmed transmission if sent by email with confirmation of delivery. Any notices not addressed as follows shall be deemed not to have been given or received:

If to the Supplier: S.A.S

France

**Attn: Sales Manager**

If to Customer: Limited

London, England.

**Attn: Product Development Director**

29.7 **Entire Agreement.** This Agreement, together with the Schedules, the Quality Agreement, the Specifications, the Disaster Recovery Plan and any Purchase Order hereunder, contains the entire agreement between the parties and supersedes all previous written or

oral negotiations, commitments, transactions, or understandings. Each party acknowledges that it has not entered into this Agreement on the basis of or in reliance on any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of, any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

29.8 **Amendments.** Except as otherwise set forth herein, this Agreement may be modified only in a written instrument, executed by duly authorised officers of both parties.

29.9 **Third parties.** The Parties to this Agreement do not intend that any term shall be enforceable by a third party as defined in the Contracts (Rights of Third Parties) Act 1999 under the provisions of that Act.

29.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of England and Wales, including all matters of construction, validity, performance and enforcement, without recourse to its conflict of law principles. The parties submit to the non-exclusive jurisdiction of the English courts.

**SIGNED** by the authorised representatives of the parties.

**Signed by** )  
 )  
duly authorised for and on behalf of )  
 **LIMITED** )

sign here:

\_\_\_\_\_  
Director

print name:  
\_\_\_\_\_

**Signed by** )  
 )  
duly authorised for and on behalf of )  
 **S.A.S** )

sign here:

\_\_\_\_\_  
Title:

print name:  
\_\_\_\_\_