



## TERMS AND CONDITIONS FOR THE PURCHASING OF GOODS

### 1. Definitions and Interpretation

In these Terms:

**“Acceptance”** as the meaning as per clause 4.2. below;

**“Affiliates”** means with respect to a Party, any other entity directly or indirectly owning or controlling such Party, owned or controlled by, or under the common Control of such Party;

**“Business Day”** means any day other than a day which is a public holiday (including bank holidays) in the jurisdiction where the Customer and the Supplier respectively have their registered office;

**“Confidential Information”** means any non-public information disclosed whether in writing, verbally or by any other means by one Party to the other Party, which may include, but is not limited to, scientific, technical, marketing, business, financial, operational, administrative and economic information related to past, present and future products, services, business plans, experience, documents or data related to the manufacturing products, recipes, plans, processes, projects, systems, schemes, drawings, costs, equipment, materials, samples, technology, packaging as well as any visual information;

**“Control”** means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity or otherwise having the power to direct its activities;

**“Customer”** means Fox's Burton's Companies (FBC) UK Limited;

**“Goods”** means the goods, including the installation of such goods to be supplied by the Supplier according to the specification, as better described in the Order;

**“Defectiveness”** or **“Non-Conformity(is)”** means the defectiveness and non-conformity as detailed in clause 6.1.;

**“Intellectual Property Rights”** means, collectively, any and all intellectual and industrial property rights, whether registered or unregistered, under any applicable law, including but not limited to patents, trademarks, original work of authorship, design, models, topographies, service marks, copyright, slogans, tags, trade dress, trade names, trade secrets, formulae, database rights,



processes, know-how, formulations, recipes, product concepts, packaging design, drawings blueprints, specifications;

**"Mandatory Policies"** means the Supplier Code of Conduct and the Customer's Anti-Bribery Policy;

**"Material(s)"** means the materials, documents, equipment, tools, drawing and specifications provided by the Customer to the Supplier;

**"Order"** means the Customer order incorporating these Terms, as accepted by the Supplier, which terms of acceptance are defined herein at clause 2.6;

**"Party(ies)"** each and both the Customer and the Supplier;

**"Personnel"** means the personnel, employees, agents and authorized subcontractors of the Supplier;

**"Policy(ies)"** means the Customer's, copies of which are available at request including (without limitation) the policy on health and safety and security on site;

**"Price"** has the meaning set out in clause 8.1 below;

**"Regulatory Requirement(s)"** means any applicable law, regulation, statute, code rule and/or ordinances in respect to the performance of the Order including but not limited to labour and environmental regulatory requirements, health and safety laws and regulations as well as any applicable laws and regulations in force at the date of delivery and/or installation of the Goods in the jurisdiction where the Goods is to be delivered and/or installed;

**"Specifications"** includes our specification or stipulation for the Goods set out in the Order or otherwise stipulated in writing, including any plan, drawings diagrams, data or other information related to the Goods and where the Goods relate to ingredients, the specification uploaded to Hamilton Grant;

**"Supplier"** means the Party selling the Goods, that has accepted these conditions and it is bound by the relevant Order;

**"Terms"** means these general terms and conditions and any subsequent amendment of their provisions as set out in clause 2.3 and 2.4 below;

**"Technical Documentation"** any and all technical and qualitative requirements and any other documentation relating to the the supply of the Goods and where applicable the respective traceability and manufacturing documentation.

## 2. Scope



2.1. These Terms govern the delivery and/or installation of the Goods as set out in the relevant Order. Save as agreed separately by the Parties in writing, nothing in these Terms shall place any commitment on the Customer to buy any Goods from the Supplier. Any forecast or estimated quantity provided by the Customer to the Supplier shall be non-binding reference for the Supplier.

2.2. By accepting an Order, the Supplier agrees that these Terms form an integral and substantial part of the Order.

2.3. Should the acceptance of an Order contain express reference to the Supplier commercial quotation concerning the quantity of Goods and the relevant Price, such quotation shall apply and be part of the Order to the strict extent that they are referred to in the order, and they are not in conflict or inconsistent with these Terms and/or the Order. The Supplier accepts that any Supplier's general terms and conditions of business are expressly excluded and shall not apply to these Terms and any Order.

2.4. Notwithstanding the clause 2.3. above, any other terms shall not be applicable unless expressly agreed in writing by the Parties.

2.5. Nothing in these Terms confer any exclusivity of supply to the Supplier.

2.6. Any Order shall be issued by the Customer from time to time, in the form adopted and in use by the Customer at such time. Each Order shall be deemed accepted by the Supplier on the earlier of (i) commencement of performance by the Supplier or (ii) 24 hours from receipt of the Order, whichever shall be earlier. The Customer will be bound by an Order only if issued by the Customer's authorized representatives and it is under the Supplier's responsibility to check that this is occurring at the issuance of the relevant Order.

### **3. Supplier's duty of performance**

3.1. The Supplier shall comply with, and cause its Personnel to comply with:

(a) these Terms;

(b) any applicable law and Regulatory Requirements, including but not limited to, anti-bribery and anti-corruption laws, health and safety, (including the Food Safety Act 1990, the Consumer Protection Act 1987 and the Trade Descriptions Act 1968) relating to the manufacture, performance, labelling, packaging, storage, handling and delivery of the Goods (as applicable);

(c) the Customer's instructions and policies and Mandatory Policies;

(d) the Specifications and Technical Documentation; and



(e) the terms of the Order (relating, among others, to the quantities to deliver, the key performance indicators, the service level, the deadline for delivery).

3.2 The Supplier shall ensure that prior to supply of raw materials, a full technical specification is completed by the Supplier on the Customer's Specification database system (Hamilton Grant).

3.3 The Supplier shall provide the Customer with all Technical Documentation at the Customer's request and in any case upon delivery/installation of the Goods.

3.4 Where requested, the Supplier shall provide the Customer with a certificate detailing the Goods country of origin;

3.5 The Supplier shall ensure the Goods are manufactured in accordance with technical standards and policies, Customer requirements and any accreditations such as BRC or GFSi and notify the Customer promptly if there is any change in accreditation;

3.6 The Supplier shall promptly notify the Customer in case of any change of the applicable laws or any material facts that may be likely to affect the delivery/installation of the Goods;

#### **4. Delivery**

4.1 The Supplier shall deliver Goods:

- (a) on the date specified in the Order, or, if no such date is specified, within such reasonable time period as requested by the Customer (and time of delivery/performance shall be of the essence);
- (b) to or at the location as is set out in the Order, or otherwise as instructed by the Customer prior to delivery or performance; and
- (c) during the Customer's normal business hours, or otherwise as instructed by the Customer.

4.2 The Supplier shall ensure that:

- (a) Goods are packed and labelled in accordance with any requirements detailed in the Specification, or Order and/or any other directions by the Customer in accordance with all Applicable Law and in such manner so as to enable the Goods to reach their destination in good condition; and
- (b) each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the purchase order number supplied by the Customer (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.



4.3 Delivery of Goods shall be completed upon completion by the Supplier of safe unloading of the Goods at the specified delivery location.

4.4 The Supplier shall not deliver any Goods in instalments other than with the agreement of the Customer.

## **5. Transfer of risk and title**

5.1 Title and risk in any Goods shall pass to the Customer on completion of delivery unless the Customer has paid for any Goods in advance of delivery in which case, title (but not risk) shall pass to the Customer on payment for the Goods in question.

5.2. In case the Goods, to be delivered and installed are equipment or machinery, the title to such Goods and transfer of risk shall pass to the Customer at the date of signature of the Acceptance, which is the point at which testing has been completed to the satisfaction of the Customer.

## **6. Representations and Warranties**

6.1. Under these Terms, the Supplier hereby represents and warrants that:

(i) it has full capacity, power and authority to validly enter these Terms and in the Order;

(ii) save as otherwise stated in the Order, the Good shall be covered by a contractual warranty provided by the Customer for a period of minimum 24 months starting from the delivery or in case of equipment as of the Acceptance of the Goods after the installation. Such warranty shall cover any Goods' defectiveness or non-conformity in respect to the Specifications, Regulatory Requirements as well as any other provision of the Order. Such warranty shall give the Principal the right, upon written notice, to (a) ask the Supplier to promptly and without delay remedy such nonconformity at its own costs and expense, or (b) directly remedy such non conformities at the Suppliers own cost. Moreover, the Parties agree and acknowledge that, any intervention on the Goods carried out by the Supplier shall imply an extension of a further 12 month's warranty period covering such intervention or repairing activity;

(iii) the Goods are manufactured and/or installed by appropriately experienced, qualified and trained Personnel with special knowledge, skill, care and diligence in accordance with generally recognised commercial practices and professional standards in the industry for similar services;

(iv) it and its Personnel have and maintain all the licences, permissions, authorisations, consents and permits that are required to deliver and/or install the Goods, as specified in the Order;



(v) it and its Personnel will not act or omit to act in any way which could bring Customer or its name, products, trademarks or logos owned by it into disrepute or which could be directly or indirectly damaging or detrimental to the reputation and image of the Customer or its brands;

(vi) the Goods are: (a) of satisfactory quality; (b) fit for their intended purpose; (c) free of design, material and workmanship defects; and (d) free and clear of any security interests, liens, claims, charges, encumbrances or liabilities;

(vii) the Goods are free from cross-contamination by any ingredients which are not set out in the Specification or which are specified under any Applicable Law as being required on the packaging of the Goods;

(viii) the goods are free from grease, odour, poisonous and toxic and/or injurious substances or unintended plastic and suitable for every respect, where the Goods are in relation to food packaging; and

(iv) it has the title and right to incorporate and use any third party's Intellectual Property Rights in the performance of the Order and that in doing so it does not infringe any third party's Intellectual Property Rights;

6.2 Where the Goods are ingredients the Supplier warrants that the ingredients in the Goods are sourced from a deforestation free supply chain and that the Supplier has the necessary due diligence needed to evidence this warranty and if required will provide Due Diligence Reference Numbers and Verification Keys for each SKU comprising the Goods.

6.3 Where the Goods are packaging related goods, the Supplier warrants that the Goods comply with the Packaging and Packaging Waste Regulation EU25/40 and that the Supplier has fulfilled all its obligations under PPT (including in relation to payment of taxes and charges); and (b) it shall use all reasonable endeavours to submit claims for any applicable refunds under PPT, which have been paid by it on relevant Finished Plastic Packing Components (as defined in PTT), which are subsequently exported by the Customer. The Customer will provide all relevant evidence to support such claims and the Provider will pass on to the Customer any refunds under PTT that it receives from HMRC.

## 7. Change and Modification



7.1 The Supplier shall not be entitled to modify the Goods without the prior written consent of the Customer.

7.2 The Supplier may not increase the Price (whether on account of increased materials, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Customer..

7.3. The Customer may, at any time, request a change to Specification or scope of the Goods (if this latter is applicable) under the Order. In such a case, the Supplier shall, within a reasonable time indicated by the Customer, provide a new written estimate to the Customer regarding the time and cost required to implement such change.

7.4. Upon written approval of the new estimate by the Customer, the Supplier shall implement the change in accordance with what has been agreed between the Parties.

## **8. Price and Payment terms**

8.1. The Price and the payment terms for the Goods, are set out in the relevant Order. The Parties agree and acknowledge that the Price shall remain valid and into force until the expiration of the Order and can be changed only upon mutual written agreement of the Parties. Unless otherwise agreed on the Order, Prices are stated delivery duty paid in accordance with Incoterms 2000.

8.2 The Customer shall pay correctly submitted invoices within 60 days of the end of the month the invoice is received together with VAT thereon (subject to the Supplier's invoice being valid for VAT purposes). Payment shall be made by bank transfer to a single bank account as nominated in writing by the Supplier.

8.4 All invoices shall be sent by the Supplier to: [fbcuk.pdfinvoice@fbc-uk.com](mailto:fbcuk.pdfinvoice@fbc-uk.com). The Supplier shall attach to its invoices any relevant documentation requested by the Customer as well as any relevant information allowing the Customer and its representatives to verify the Supplier's invoices. The Supplier is aware that non-compliance creates a risk for delayed payments of invoices. To such purpose, the Customer shall have the right to suspend any payment invoice in case of incomplete documentation attached to each relevant invoice.

8.5 The payment shall be made in the currency set out in the Order and shall not constitute acceptance or recognition of the Supplier's proper performance under these Terms.

8.6. In the event of dispute, the Customer shall be entitled to set off any amount due at any time to the Supplier against any undisputed amount due, from the Supplier to the Customer.



8.7 If the Customer fails to make any payment to the Supplier by the due date then at the written request of the Supplier the Customer shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time. Subject to the other provisions of this Clause 8 such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Interest shall not though apply to any payment which the Customer disputes in good faith.

8.8. If the Supplier is materially in default of any of its obligations under these Terms, the Customer has the right to suspend the payments of any outstanding amounts of the Price, subject to written notice to the Supplier.

## 9. Non-Conformity of the Goods and Failure to Deliver

### 9.1 Testing and Acceptance

The Customer shall have the the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with clause 3.1(i) then the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions. Notwithstanding any inspection or testing pursuant to this clause, the Supplier shall remain fully responsible at all times for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under any Order.

### 9.2. Defectiveness/Non-Conformity

In the event the Goods or any part of them are defective, or do not conform to these Terms, Specification or Regulatory Requirements or any other provision set out in the relevant Order (hereinafter referred to as "**Defectiveness**" or "**Non-Conformity(is)**"), the Customer will, upon written notice not exceeding 20 (twenty) calendar days from the discovery, have the right to (a) to terminate the applicable Order and (at the Customer's discretion) any other outstanding Orders; (b) to reject the Goods (in whole or in part) and in the case of Goods, to return those to the Supplier at the Supplier's own risk and expense or require the Supplier to collect those Goods, in which case, the Supplier shall collect at its own expense within 5 days; (c) require the Supplier to promptly and without delay remedy the ascertained Non-Conformity at Supplier's exclusive cost and expense. Should the Supplier fail to remedy such ascertained Non-Conformity, then the Customer shall be entitled to directly remedy such Non-Conformities, at the Supplier's cost. In the above circumstances the Supplier shall: (i) bear any costs for repair or replacement of the Goods in such a way to be in compliance with the Order and/or Regulatory Requirements; and (ii) reimburse any further cost, Fox's Burton's Companies (FBC) UK Limited Terms and Conditions of Purchase v2 05032026



charge or expense incurred by the Customer in relation to the repair, modification or replacement of the Goods affected by the Non-Conformity. All the above, without prejudice to further rights of the Customer granted by any applicable Regulatory Requirement.

### 9.3 Product Recall

The Supplier shall notify the Customer immediately of: (a) any adverse results arising out of analytical, microbiological or other quality or specification checks carried out in respect of the Goods and discovered before or after their delivery; (b) any actual or suspected failure of any Goods to meet the requirements of Clause 6.1(viii); and/or (c) any failure by the Supplier to label any Goods in accordance with Clause 4.2(a). The Customer at its absolute discretion, has the right to recall the Goods if the risks of Defectiveness is real and/or alleged, or in the event of a mandatory instruction, instigation, recommendation or suggestion of any governmental or regulatory body at the Supplier's cost and expense, including the penalties that the Customer's clients may request as a result of the recall of the Goods and of any finished products embedding the Goods. The Supplier shall immediately provide all assistance at its own cost required by the Customer in respect of such withdrawal or recall and shall maintain in place an appropriate crisis management procedure to enable it to do so. The Customer reserves the right to un-announced visits and audits of manufacturing practices or storage premises. The Customer also reserve the right for test results which must be supplied with immediate effect any non-conforming results must be highlighted and notified as per this clause 9.2.

### 9.4 Failure to Deliver

The Supplier shall promptly notify in writing the Customer in case of any failure or anticipated failure to provide the Goods. Should the Supplier fail to deliver the Goods in compliance with the time of delivery and/or the quantity agreed, Purchaser may, at its own discretion and without prejudice to any additional rights: (i) require the immediate fulfilment of the Order, in whole or in part; and/or (ii) procure the Goods from a third party at the Supplier's cost and risk, with the sole obligation of notifying the Supplier. Customer is entitled to reject the Goods accompanied by a delivery note, should such a note not comply with any Regulatory Requirement, as well as missing the proper indication of the date and number of the Order.

## 10. Compliance

### 10.1 Supplier Code of Conduct

The Supplier declares that it has read and will adhere to the contents of the Customer Code of Business Conduct.

### 10.2 Anti-Bribery



The Supplier warrants that it has never committed an offence under the Bribery Act 2010 (a Bribery Offence).

The Supplier shall:

- (a) not, and shall procure that its Personnel shall not, commit any Bribery Offence; and
- (b) operate adequate procedures designed to prevent persons associated with it from bribing another person intending to obtain or retain business or a business advantage for it.

#### 10.3 GDPR

The Parties shall comply with all applicable data protection laws and regulations currently in effect or as subsequently updated, amended, or revised, amongst which, without limitation, the EU General Data Protection Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (GDPR) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and any other applicable national implementing legislation.

Where the Supplier, in the course of providing the Goods to the Customer, acts in the capacity of a data processor, as defined in the GDPR or any applicable national data protection legislation, the Supplier hereby undertakes:

- a) to enter into a contact with the Customer that complies with Article 28(3) of the GDPR; and
- b) only engage another processor in compliance with Article 28(2) of the GDPR

#### 10.4 Sanctions

The Supplier confirms that it is not on, or owned or controlled by, any person/entity on any list of designated or blocked persons/entities subject to trade, financial, economic sanctions or embargoes and that no person or entity on a sanctions list shall be involved in the performance of its obligations under these Terms or its fulfilment of any Order.

#### 10.5 Sedex

The Supplier shall be registered at all times as a (B) member of Sedex with a completed self-assessment questionnaire completed as a condition of trade. Access must be granted to the Customer to review this. The Supplier shall ensure that manufacturing sites they distribute from are registered with Sedex. The Supplier shall promptly notify the Customer if they cease to be registered as a (B) member of Sedex and the Customer shall have the right to cancel any Order.

#### 10.6 Consequence of breach



Any breach of this clause 10 by the Supplier shall be deemed an irremediable material breach entitling the Customer to immediately terminate the Agreement and any Orders.

### **11. Indemnity & Insurance Coverage**

11.1. The Supplier shall at all time keep the Customer, indemnified against all liabilities, costs (including but not limited to legal costs), expenses, damages and losses, including, but not limited to, any direct, indirect, consequential losses, loss of profit, loss of business and loss of reputation, incurred by the Customer in connection with any wrongful act, omission, negligent act, default or breach of any obligations, representations and warranties of the Supplier or its Personnel under the Order and these Terms. For the avoidance of doubt. Factory downtime shall be considered a direct loss.

11.2. In addition to clause 10.1. above, the Supplier shall keep the Customer indemnified against any claims: (a) for actual or alleged infringement of any third party's Intellectual Property Rights and third party's Confidential Information; (b) for death, personal injury or damages arising out of or in connection with the non-conformity of the Goods, under the Order and these Terms.

### **12. Insurance**

12.1 The Supplier shall, keep in place with reputable insurers such insurance policies that are appropriate and adequate having regard to their obligations and liabilities including employers liability insurance, public liability insurance at a minimum of £10,000,000 per incident and product recall insurance at a minimum of £5,000,000 per incident. The Supplier shall, upon request, promptly provide to the Customer a broker's letter or certificate of insurance to evidence such insurance.

### **13. Confidentiality**

13.1. Each party undertakes that it shall not disclose to any person any Confidential Information of the other party. Each party shall use the Confidential Information received from the disclosing party only for the performance of the relevant Order. The existence of these Terms and the Order shall be considered as Confidential Information. Only the Personnel who needs to have access to such Confidential Information in relation to the Order shall have access to the relevant Confidential Information, on a strict need-to-know basis.

13.2. Upon the disclosing party's instruction, all the documentation containing Confidential Information shall be returned to the disclosing party or destroyed.

13.3. Each Party may disclose the Confidential Information if such disclosure: (i) is required by law, a court order or any governmental or regulatory authority or; (ii) is necessary to require the enforcement of any obligation arising out of the Order before a court or, if applicable, an arbitral court. If disclosure is required, the Confidential Information will be disclosed on a strict need-to-



know basis. The Party who discloses the Confidential Information shall immediately notify the other party of such disclosure.

#### 14. Intellectual Property Rights

14.1. The Parties acknowledge and agree that each Party, shall at all times remain the owner of any Intellectual Property Rights owned before the start of its relationship with the other Party under the Order or created outside and independently from these Terms ("**Background Intellectual Property Rights**").

14.2. The Supplier acknowledges that these Terms do not grant to the Supplier any right or title of ownership or right to use/exploit any of the Customer's, Background Intellectual Property Rights. In particular, the Supplier shall not be entitled to use or dispose of any Intellectual Property Rights related to any materials and/or the Technical Documentation handed over by the Customer.

14.3. Subject to the provisions of these Terms, the Supplier hereby acknowledges and agrees that the Customer is and shall remain the exclusive owner of any and all Intellectual Property Rights related to the Goods, as arising out or in connection with the Order, including those developed by the Supplier, if any, as well as any and all relevant Technical Documentation ("**New Intellectual Property Rights**").

14.4 The Provider (i) shall maintain confidential and shall not reveal, disclose or transfer to any third party the Technical Documentation, or any part thereof, and (ii) shall not use any New Intellectual Property Rights, developed by the Provider in performing these Terms for designing, manufacturing or supplying similar services and/or works for any third parties.

14.5 The Supplier acknowledges that all materials, moulds, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier and all rights in and to such are and shall remain the exclusive property of the Customer. The Supplier shall keep any such materials which are provided to it in safe custody at its own risk; maintain them in good condition until returned to the Customer; and shall not use the same other than for the proper performance of any Order and otherwise in accordance with the Customer's written instructions and authorisations. Further, the Supplier shall not sell, dispose of or in any way charge or encumber any such Customer property (nor purport to do so) and shall ensure that all such Customer property is kept separate by the Supplier from any other property and clearly identified as belonging to the Customer.

14.6 In case the Supplier becomes aware of any infringement or threatened infringement of the Customer's Intellectual Property Rights, the Supplier shall promptly notify the Customer in writing. To the extent that any Intellectual Property Rights supplied to the Customer under these Terms is created by Personnel of the Supplier, the Supplier shall obtain an unconditional assignment from such Personnel to enable the transfer of any such Intellectual Property Rights to the Customer.

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14.7. The Supplier shall not use of the name(s) and/or trademark(s) of the Customer, in any commercial, or advertising activity or otherwise without the prior written consent of the Customer.

## 15. Cancelling an Order

15.1 The Customer may terminate any Order in whole or in part at any time before completion of delivery or performance with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on that Contract or the affected part (in the case of partial termination). In such circumstances as the Supplier's sole and exclusive remedy the Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination (in any event not to exceed the price of the Goods or Services in question), but such compensation shall not include loss of anticipated profits or any consequential loss and the Supplier hereby waives any claim which it might otherwise have against the Customer in respect of such losses.

## 16. Termination

### 16.1 Customer Termination

The Customer may terminate the Order (or any part of it) immediately, without liability:

- (a) On written notice to the Supplier, if at any point its receipt of the Goods or performance of either party's obligations under the Order, is or would be, unlawful, or is a public health risk.
- (b) If the Supplier commits an irremediable breach, which shall include a breach of clause 10 Compliance; or
- (c) the Supplier is subject to a Change of Control and the Customer reasonably believes such Change of Control has or will have an adverse impact it or its reputation.

### 16.2 Mutual Termination.

Either party may immediately terminate the Order by giving written notice to the other if the other party:

- (a) commits a material breach (incapable of remedy) of any of its obligations under the Terms or, if capable of remedy, fails to remedy such material breach within within 30 (thirty) days of receiving written notice from the non-breaching party to do so; or



(b) is insolvent as the same is understood under the Insolvency Act 1986 and/or the other party proposes or takes any step (or a third party takes any step) with a view to proposing or commencing any insolvency or restructuring process, plan, arrangement or procedure (other than a genuine solvent reorganisation or reconstruction) including any person takes any step towards appointing a trustee, supervisor, receiver, liquidator, administrator, monitor or similar officer or other encumbrancer of the party or any of its assets and/or any person takes any step to take possession of, seize, or levy a distress or execution against any of the other party's assets

### 16.3 Consequences of Termination

Upon termination of the Order, the Supplier shall promptly return to the Customer all the Materials, Confidential Information, Technical Documentation related to the Order.

For the avoidance of doubts, the Parties further agree and acknowledge that the provisions under clause 13 Confidentiality, clause 11 Indemnity & Insurance and clause 14 Intellectual Property Rights of these Terms shall survive the termination, for whatever reason, of these Terms and shall remain in full force and effect to the maximum extent permitted under any applicable law.

Unless expressly stated in clause 15, the termination of the Order, or any part thereof, shall not of itself give rise to any liability on the part of the Customer to pay any compensation to the Supplier or the Personnel, including but not limited to loss of profits.

## 17. Force Majeure

17.1. **“Force Majeure Event”** shall mean any unforeseen event which is beyond the reasonable control of the Parties or any foreseeable occurrence the consequences of which may not reasonably be avoided that arises after the date of signature of the Order and which prevents performance of these Terms, in whole or in part, by either Party (including but not limited to war, revolution, embargo, riot, civil disorder, sabotage, accident, act of God, fires, strikes, lock outs, or other industrial action, or order or act of an authority (including, without limitation, administrative action, rule, regulation or legislation).

17.2. If a Force Majeure Event occurs, performance of the parties' obligations under the Order shall be suspended for the duration of the delay caused by the Force Majeure Event and the period of performance shall be automatically extended, without any penalty, for an equal period. The Parties shall undertake to make their best efforts in order to minimize the consequences relating to such Force Majeure Event and especially of delays incurred.



17.3. Upon the occurrence of a Force Majeure Event and in any case no later than 4 (four) Business Days from it, the affected Party shall immediately inform in writing the other Party by electronic message or facsimile, including the description of the relevant Force Majeure Event and the reasons for the delay or inability to perform the obligations arising under these Terms.

17.4. The affected Party shall notify the other Party of the end of the Force Majeure Event within 3 (three) Business Days from the date of the end.

17.5. The burden of proof of any Force Majeure Event, occurred under this clause 17, shall be borne by the affected Party.

17.6. The Parties have the right to terminate without any liability and with immediate effect these Terms and/or the Order, by giving a prior written notice to the other Party when one of the Parties is unable to carry out any of its obligations under these Terms and/or the Order as a result of the occurrence of a Force Majeure Event, if the Force Majeure Event prevents a Party from performing the contract for more than 15 (fifteen) Business Days within a period of 6 (six) following months.

## **18. Cyber Security**

18.1 Where the Goods and/or their installation will require access to our systems, the Supplier shall:

- a) perform and comply with the Cybersecurity Assessment provided by the Customer and acknowledge and remediate the non-compliant and/or partially compliant security controls thereto identified and deemed necessary as agreed between the Parties. For the purpose of this clause, "Cybersecurity Assessment" means a series of actions to collect and analyse the information necessary to evaluate the cybersecurity posture of the Supplier;
- b) solely when provided by the Customer with email, computers, and devices with information storage capability, respect the "Cybersecurity Rules for Supplier" as available at [www.ferrerosuppliers.com](http://www.ferrerosuppliers.com);
- c) deliver and make sure that all representatives who have access to the Customer systems, data, or information undergo cybersecurity training at least once per calendar year as well as retain, for at least as long as required by Applicable Law, and provide to the Customer upon request, records of the cybersecurity training and related assessment's results. The cybersecurity training shall cover relevant aspects of cybersecurity, including but not limited to, social engineering and phishing MFA (Multi-Factor Authentication), password security, information classification and protection, patching (up-to-date legitimate software) and secure collaboration;



- d) solely when provided by the Customer with a Ferrero Guest User Account, subject their representatives to Customer's Phishing Campaigns. For the purpose of this clause "Ferrero Guest User Account" means a unique user account created in ferreronet for third party personnel and "Phishing Campaign" means a security training exercise done as part of a cybersecurity awareness program aiming to simulate phishing attacks on an organization's employees to test their awareness and preparedness against such attacks, as way of example, a fraudulent attempt to obtain sensitive information by disguising as a trustworthy organization or reputable person in an email communication;
- e) notify without undue delay the Customer of any Cybersecurity Incident at [cybersecurity@ferrero.com](mailto:cybersecurity@ferrero.com). and resolve the Cybersecurity Incident in a timely manner. For the purpose of this clause "Cybersecurity Incident" means any cyber event that jeopardizes the confidentiality, integrity or availability of the Customer's information system and/or of the Customer's information the system processes, stores or transmits and/or that constitutes a violation of the Customer's Cybersecurity Rules for Supplier, whether resulting from malicious activity or not, as a way of example, a successful login recognized as malicious, among a series of login attempts;
- f) allow, in compliance with the right to audit as regulated by the Agreement, the Customer to inspect and audit the Supplier's Cybersecurity Requirements to verify alignment and compliance to the Customer's standards. For the purpose of this clause, "Cybersecurity Requirements" means requirements levied on an information system that are derived from applicable laws, directives, policies, standards, instructions, regulations, or procedures to ensure the confidentiality, integrity, and availability of the information being processed, stored, or transmitted.

## 19. Miscellaneous

### 19.1. Remedies

Each right or remedy under these Terms is without prejudice to any other legal remedy granted to the Customer whether under these Terms or under the applicable law. For the sake of clarity, all rights and remedies of the Customer, or either of them, arising out of or in connection with the Order shall be deemed to be cumulative and not alternative.

### 19.2. No Waiver of Rights

Any Customer indulgence on a temporary basis towards the Supplier in respect of the performance of the Order, or failure of the Customer to enforce any of the provisions of these Terms shall not be construed as a waiver or otherwise prejudice any of the Customer right here and thereunder.



### **19.3. Severability**

If any provision of these Terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part of such provision shall, to the extent required, be deemed not to form part of these Terms, and the validity and enforceability of the other provisions of these Terms shall not be affected.

If a provision of these Terms (or part of any provision) is found to be illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to best meet the legal and economic aim of the inoperative provision. This does not apply in case complying with these Terms would constitute unreasonable hardship for one or both Parties.

### **19.4. Independent Contractor and non-Exclusive Basis**

It is expressly agreed between the Parties that the Supplier is and shall be deemed to be an independent contractor under these Terms and that the Supplier is not in any respect acting as a partner, agent or in joint venture with the Customer.

It is further understood and agreed that all the Personnel shall not be deemed as employees of the Customer. The Supplier shall be entirely and solely responsible for its acts and the acts of the Personnel including, but not limited to: (i) the payment of any and all compensation, contribution and benefits due to the Personnel under any applicable law; and (ii) reporting, withholding and remitting to any governmental authority all income and employment taxes attributable to such compensation and benefits. For purpose of clarity, it is agreed that the relationship between the Parties is nonexclusive, and that no exclusivity is granted by a Party to the other.

### **19.5 No Assignment and no Subcontracting**

The Supplier shall not assign and/or subcontract the Order, or any part thereof as well as any right or obligation thereunder, save expressly and separately authorised in writing and in advance by the Customer. For the sake of clarity, the Supplier shall not sell, transfer or assign to any third party any credit the Supplier may have toward the Customer. In any event, when expressly authorized by the Customer in writing, the Supplier shall remain responsible for the performance of the Order.

The Customer may at any time, subject to prior written notice to the Supplier, assign the Order, in full or in part, to any of the Customer's Affiliates.

### **19.6. Entire Agreement**

Without prejudice to article 2 of the present Terms, these Terms represents the entire agreement between the Parties on the subject matter hereof and they supersede all prior discussions,

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agreements and understandings of every kind and nature between them. No modification of these Terms will be effective unless made in writing and signed by the Parties.

#### **19.7. Notices**

Any notice required to be given under these Terms shall be in writing in English Language. Notices shall be addressed to the addresses of the Parties indicated in the Order.

#### **19.8. Photography, Filming and External Communications**

You must not take, create, record or otherwise capture any photographs, video, audio or other imagery inside our factories or facilities, or of our products, processes or people, whether by personal devices or otherwise, unless we have given prior written permission.

You must not issue, publish or share any external communications, (including photographs, video, audio or other imagery), announcements, case studies, press releases, social media posts, testimonials, endorsements, public statements or other marketing or promotional materials that reference, depict or otherwise identify FBC UK, any of our brands, products, services, personnel or facilities, without prior written approval from our external communications team.

#### **19.9 Governing Law and Settlement of Disputes**

These Terms and any dispute or claim arising out of or in connection with the Order shall be subject to and construed according to the law of England.

Any dispute arising under or in connection with these Terms shall fall under the exclusive jurisdiction of the courts of England.

Signed by:

Name: \_\_\_\_\_

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

On behalf of \_\_\_\_\_

Dated \_\_\_\_\_



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