

## 1. INTERPRETATION

### 1.1 DEFINITIONS

**Business Day:** a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods or Services or Goods and Services from the Supplier.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** has the meaning given to it in condition 15.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods or Services or Goods and Services, whether issued by the Customer to the Supplier or constituted by the Customer's acceptance of any quotation issued by the Supplier.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** any specification for the Goods and Services that is agreed in writing by the Customer and the Supplier.

**Supplier:** Orca Global Company Limited, registered in Scotland with company number SC658374.

## 1.2 INTERPRETATION

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (c) A reference to **writing** or **written** includes email.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue unless otherwise agreed between the parties.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 3. GOODS

- 3.1 The Goods are described in the Supplier's catalogue and/or website and/or as otherwise agreed between the parties, and as modified by any applicable Specification.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable law or regulatory requirement, and the Supplier shall notify the Customer in any such event.

#### 4. DELIVERY OF GOODS

The Supplier shall ensure that: each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. QUALITY OF GOODS**

- 5.1 The Supplier warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description or the Specification as the case may be;
- (b) be free from material defects in design, material and workmanship.

- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

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

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods Specification as the case may be as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

**6.2** Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

## **7. SUPPLY OF SERVICES**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and Services;
- (c) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (d) comply with any additional obligations as set out in the Specification.

- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9. CHARGES AND PAYMENT

- 9.1 The price for Goods:

- (a) shall be the price set out in the Contract or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Contract; and
- (b) shall be exclusive of all costs and charges of transport of the Goods which shall be as detailed in the Contract and which shall be invoiced to the Customer unless otherwise decided by the Supplier.

- 9.2 The charges for Services shall be as set out in the Contract or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Contract.
- 9.3 In respect of a first Order and at its sole discretion in respect of any other Orders, the Supplier shall issue and the Customer shall pay, the relevant invoice in advance of delivery. Otherwise, in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery and in respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 9.4 Other than in respect of a first Order and any other Order in respect of which at its sole discretion the Supplier requires payment of an invoice in advance of delivery, the Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.5 All amounts payable by the Customer under the Contract are exclusive of value added tax chargeable from time to time, which the Customer shall also pay where it is chargeable.
- 9.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under condition 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by the Supplier.

## **11. LIMITATION OF LIABILITY**

- 11.1 References to liability in this condition 11 include every kind of liability arising under or in connection with the Contract including liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.

- 11.2 Nothing in the Contract limits any liability for: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; defective products under the Consumer Protection Act 1987; or any liability that legally cannot be limited.
- 11.3 Subject to condition 11.2, the Supplier's total liability to the Customer in respect of the Contract shall not exceed the amount of that Contract.
- 11.4 The following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 11.5 The Supplier shall have no liability to end customers or consumers to whom the Customer re-sells the Goods.
- 11.6 This condition 11 shall survive termination of the Contract.

## **12. TERMINATION**

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of ten Business Days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.



- 12.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

### **13. CONSEQUENCES OF TERMINATION**

- 13.1 On termination of the Contract, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

### **14. CONFIDENTIALITY**

- 14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 14; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 15. FORCE MAJEURE

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for thirty Business Days', the party not affected may terminate the Contract by giving not less than ten Business Days' written notice to the affected party.

## 16. GENERAL

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

### 16.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):  
  
Supplier:sales@orcahygiene.com  
  
Customer: the email address from which the Order was placed.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside 9.00 am to 5.00 pm in the place of receipt, at 9.00 am on the next Business Day following transmission.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 16.7 **Third party rights.** The Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.
- 16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.
- 16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.