

OPTIMA INTERNATIONAL LIMITED

TERMS AND CONDITIONS OF PURCHASE

1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation shall apply in these Terms:

"Business Day" a day (other than a Saturday, Sunday or public holiday) when banks in the United Kingdom are open for business;

"Confidential Information" all confidential information (however recorded or preserved) disclosed by each party or its Representatives to the other party and the other party's Representatives in connection with the Contract, including but not limited to:

(a) the existence and terms of the Contract;

(b) any information that would be regarded as confidential by a reasonable business person including but not limited to:

(i) the business, affairs, customers, clients, suppliers, plans, intentions or market opportunities of each party; and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of each party; and

(iii) any information developed by each party in the course of carrying out the Contract,

whether or not such information (if in anything other than oral form) is marked confidential;

"Contract" the contract between Optima and the Supplier for the supply of Products in accordance with these Terms;

"Delivery Date" the date and time for delivery of the Products as agreed by the parties in writing and as set out in the Purchase Order;

"Delivery Location" the address for delivery of the Products as set out in the Purchase Order;

"Insolvency Event" the other party: (a) enters liquidation or a winding up petition is presented against the company; (b) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (c) proposes to make any arrangements with its creditors or passes a resolution to place the company into liquidation; or (d) suffers an event which, under the law of a different country, is equivalent to any of the previously specified acts or events;

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

"Products" the products as described in the Purchase Order;

"Price" the price payable for the Products by Optima as determined in accordance with clause 3.1 and documented in the relevant Purchase Order;

"Purchase Order" Optima's acceptance to purchase Products from the Supplier;

	"Optima"	Optima International Limited being a company registered in England and Wales with company number 00684096 and having its registered office at Optima House, Askern Road, Toll Bar, Doncaster, South Yorkshire, DN5 0QY;	2.5	Optima shall assign a purchase order number to each Purchase Order placed with the Supplier, such purchase order number to be stated on the Purchase Order. Each party shall use the relevant purchase order number in all subsequent correspondence relating to that Purchase Order.
	"Representatives"	in relation to a party, its employees, officers, representatives, contractors, subcontractors and advisers;	2.6	Optima may at any time prior to despatch of the Products amend or cancel a Purchase Order by written notice to the Supplier. If Optima amends or cancels a Purchase Order, 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 amendment or cancellation.
	"Specification"	the technical or other specification for the Products, including any related plans, drawings and any part numbers, that is agreed in writing by Optima and the Supplier;	2.7	The Supplier shall ensure no other terms and conditions are submitted (in standard form documentation or otherwise) by the Supplier during this Contract. Any such terms and conditions submitted by the Supplier in the course of ordering and/or supplying any Products under this Contract shall not replace, alter or amend the terms of this Contract.
	"Supplier"	any company, firm or individual which offers to sell and supply the Products to Optima; and	3	Product Prices
	"Terms"	these terms and conditions as amended from time to time in accordance with clause 12.5.	3.1	The Price payable by Optima for the Products shall be set out in the Purchase Order.
1.2	Clause and paragraph headings shall not affect the interpretation of these Terms. The Purchase Order forms part of these Terms and shall have effect as if set out in full in the body of these Terms and any reference to these Terms includes the Purchase Order.		3.2	The Prices set out in the Purchase Order shall remain fixed and may not be increased by the Supplier without the prior written consent of Optima.
1.3	Words in the singular shall include the plural and vice versa. A reference to one gender shall include a reference to the other genders.		3.3	The Prices are inclusive of the costs of packaging, labelling, insurance, export / import duties and carriage of the Products unless otherwise agreed and set out in the Purchase Order.
1.4	A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of these Terms and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of these Terms.		4	Production, Quality and Packing
1.5	Any phrase introduced by the terms including , include , in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.		4.1	The Supplier shall produce, pack, label and supply the Products strictly in accordance with the Specification and all generally accepted applicable industry standards and practices.
2	Order Process		4.2	The Products supplied by the Supplier under this Contract shall:
2.1	The Supplier shall sell and Optima shall purchase the Products as described in the Purchase Order.		4.2.1	conform strictly to the Purchase Order and the Specification;
2.2	A Purchase Order constitutes an acceptance by Optima to purchase the Products in accordance with these Terms at which point and on which date this Contract shall come into existence.		4.2.2	be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Optima; and
2.3	This Contract constitutes the entire agreement between the parties. Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in this Contract.		4.2.3	comply with all applicable laws including any statutory and regulatory requirements.
2.4	The parties agree that nothing in this Contract shall impose any obligation on Optima to purchase a minimum quantity of Products in any given period.		4.3	Optima shall have the right to enter the Supplier's premises to:
			4.3.1	inspect the facilities and the equipment used by the Supplier in the production of the Products;
			4.3.2	inspect and take samples of the Products and the packaging; and
			4.3.3	inspect stock levels of the Products.
			4.4	Inspections carried out pursuant to clause 4.3 shall be carried out during business hours on reasonable notice to the Supplier. If Optima reasonably considers that the Products are not or are not likely to be as warranted under clause 4.2, Optima shall inform the Supplier and the Supplier

shall immediately take such action as is necessary to ensure that the Products are or will be as warranted under clause 4.2. Optima shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

5 Delivery

- 5.1 The Supplier shall deliver the Products to the Delivery Location on the Delivery Date and time shall be of the essence in respect of such delivery.
- 5.2 If any Products are not delivered on the Delivery Date, then, without limiting any other right or remedy Optima may have, Optima may:
- 5.2.1 refuse to accept any subsequent attempted delivery of the Products and require a refund from the Supplier of any sums paid in advance for the Products that the Supplier has not supplied;
 - 5.2.2 terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
 - 5.2.3 recover from the Supplier any costs incurred by Optima in obtaining substitute products from another supplier; and
 - 5.2.4 claim damages for any other costs, loss or expenses incurred by Optima which are in any way attributable to the Supplier's failure to deliver the Products on time or to carry out its obligations under this Contract.
- 5.3 The parties agree that if in respect of a Purchase Order the Supplier delivers up to and including 5% less than the quantity of the Products set out in the Purchase Order, then Optima shall not be entitled to reject the Products, but a pro rata adjustment shall be made to the Price payable by Optima in respect of such Products. If in respect of a Purchase Order the Supplier delivers more than the quantity of the Products set out in the Purchase Order, then Optima shall not be obliged to pay for the additional Products in respect of that delivery.
- 5.4 Each Purchase Order shall be accompanied by a delivery note from the Supplier showing the purchase order number (as referred to in clause 2.5), the date of the Purchase Order and the type and quantity of Products included in the Purchase Order.
- 5.5 Risk in Products shall pass to Optima on the later of:
- 5.5.1 acceptance (in accordance with clause 6.1); and
 - 5.5.2 payment in full to the Supplier (in cash or cleared funds) for the Products.
- 5.6 Title to the Products shall pass to Optima on the earlier of:
- 5.6.1 delivery (in accordance with this clause 5); and
 - 5.6.2 receipt by the Supplier of payment in full (in cash or cleared funds) for the Products.

6 Acceptance and Defective Products

- 6.1 Optima shall not be deemed to have accepted any Products until it has had a reasonable time to inspect them following delivery in accordance with clause 5 or, if later, within a reasonable time after any latent defect in the Products has become apparent. Any signature by any representative of Optima on any delivery note provided by the Supplier shall not represent acceptance by Optima of the delivered Products, nor confirmation that the delivery of the Products has been completed in accordance with the terms of the Contract.
- 6.2 If any Products delivered to Optima do not comply with clause 4.2, or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that Optima may have, Optima may notify the Supplier that it rejects those Products and:
- 6.2.1 require the Supplier to replace the rejected Products at the Supplier's risk and expense within 5 Business Days (if the Products are off-the-shelf products) and 14 Business Days (if the Products are bespoke products) of being requested to do so; or
 - 6.2.2 require the Supplier to repay the Price of the rejected Products in full; and
 - 6.2.3 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 Contract.
- 6.3 Optima's rights and remedies under clause 6.2 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 Contract by the Sale of Goods Act 1979.
- 6.4 This Contract shall apply to any replacement Products supplied by the Supplier.
- 6.5 If the Supplier fails to promptly replace the rejected Products in accordance with clause 6.2.1, Optima may, without affecting its rights under clause 6.2.3, obtain substitute products from a third party supplier, and the Supplier shall reimburse Optima for the costs it incurs in doing so.
- ## **7 Terms of Payment**
- 7.1 The Supplier shall be entitled to invoice Optima for each Purchase Order on or at any time up to 12 months after delivery of the Products at the Delivery Location.
- 7.2 Subject to acceptance of the Products in accordance with clause 6, Optima shall pay valid invoices in full within 45 days of the end of the month within which the relevant invoice is received by Optima, unless otherwise agreed between the parties in writing. Payment shall be made by cheque or BACs to the address or bank account, as applicable, nominated in writing by the Supplier.
- 7.3 If Optima fails to pay an invoice in accordance with clause 7.2, the Supplier shall notify Optima in writing of the outstanding invoice and Optima shall then pay such invoice within 10 Business Days. If the Supplier fails to notify Optima in writing of the outstanding invoice, non-payment

	of the outstanding invoice by Optima shall not constitute a material breach pursuant to clause 11.1.1.	9.2.1	it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
7.4	If Optima disputes any invoice or other statement of monies due, Optima shall 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. Where part of an invoice is disputed, the undisputed amount shall be payable in accordance with the payment terms specified in clause 7.2. The Supplier's obligations to supply the Products and fulfil any outstanding Purchase Orders shall not be affected by any payment dispute.	9.2.2	it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause 9,
			and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 9.
7.5	If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party will pay interest on the overdue amount at the rate of two per cent (2%) per annum above the Bank of England's base rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, after judgment. The defaulting party will pay the interest together with the overdue amount. This clause will not apply to payments the defaulting party disputes in good faith pursuant to clause 7.4.	9.3	Each party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
		9.4	Each party reserves all rights in its Confidential Information. No rights or obligations in respect of each party's Confidential Information other than those expressly stated in this clause 9.4 are granted to the other party, or to be implied from these Conditions.
		9.5	Except as expressly stated, neither party makes any express or implied warranty or representation concerning its Confidential Information.
8 Indemnity		9.6	The provisions of this clause 9 shall continue to apply after termination or expiry of the Contract.
8.1	The Supplier shall indemnify Optima against all liabilities, costs, expenses, damages and losses suffered or incurred by Optima arising out of or in connection with:	10 Intellectual Property Rights	
8.1.1	any claim made against Optima by a third party arising out of, or in connection with, the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors; and	10.1	The parties acknowledge and agree that unless otherwise agreed between the parties in writing, each party shall at all times remain the owner of all Intellectual Property Rights owned by it prior to the date of the Contract or created outside the scope of and independently of the Contract.
8.1.2	any claim made against Optima by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.	10.2	The Supplier will indemnify, keep indemnified and hold Optima harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, in each case whether or not foreseeable as at the date of the Contract, (calculated on a full indemnity basis), and all other professional costs and expenses) suffered or incurred by Optima, or made against them, as a result of or in connection with any claim made against Optima for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Products, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
9 Confidentiality		11 Termination	
9.1	Each party shall keep confidential any Confidential Information that it may acquire and shall not:	11.1	Optima shall be entitled to terminate this Contract with immediate effect by giving notice in writing to the Supplier if:
9.1.1	use the Confidential Information for any purpose other than to perform its obligations under the Contract ("Permitted Purpose"); or	11.1.1	the Supplier commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after receipt of notice in writing requiring it to do so;
9.1.2	disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 9.	11.1.2	the Supplier commits a series of persistent minor breaches which, when
9.2	Each party may disclose the Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:		

- taken together, amount to a material breach;
- 11.1.3 one or more of the following applies to the Supplier: (a) it ceases to trade; (b) it is unable to pay its debts; or (c) it suffers an Insolvency Event;
 - 11.1.4 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.3; or
 - 11.1.5 there is a change of control (as defined in section 1124 Corporation Tax 2010) of the Supplier.
- 11.2 A breach of clause 4.2 shall be a material breach of obligations for the purposes of this clause 11.
- 11.3 Termination of this Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.
- 12 General**
- 12.1 **Anti-bribery, Modern Slavery and Criminal Finances.** Each party shall comply with the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010, the Modern Slavery Act 2015 or the Criminal Finances Act 2017.
- 12.2 **Assignment and Subcontracting.** Optima may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Optima.
- 12.3 **Further Assurance.** At any time, each party shall sign all documents and do or cause to be done all further acts and things as that party so requiring may reasonably require to give full effect to this Contract. This clause 12.3 shall survive termination.
- 12.4 **Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.5 **Variation.** Optima reserves the right to amend these Terms from time to time. Except as set out in these Terms, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by each party.
- 12.6 **Waiver.** No failure to exercise or delay in exercising any right or remedy provided under this Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy. No single or partial exercise of any right or remedy under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 **Notices.** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or by email. Any communication sent by email must be followed by a written notice to the other party's registered office address. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by email at 9.00am on the next Business Day after transmission, or otherwise at 9.00am on the second Business Day after posting.
- 12.8 **Severance.** If a court or any other competent authority finds that any provision (or part of any provision) of this Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected. If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.9 **No partnership.** Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.10 **Third parties.** A person who is not a party to this Contract shall not have any rights under or in connection with it.
- 12.11 **Governing Law and Jurisdiction.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.