

MICROBIOLOGICAL SOLUTIONS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

These Terms and Conditions apply to all Orders for the provision of Services that the Customer places with MSL and sets out all the terms in relation to MSL supplying Services to the Customer. By signing these Conditions, signing an RPA and/or allowing MSL to commence the Services, the Customer acknowledges and agrees that it shall be bound by these Conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

Conditions means the terms and conditions set out in this document;

Confidential Information has the meaning given in Condition 16.1;

Contract means any agreement between MSL and the Customer for the provision of Services incorporating these Conditions, any relevant SLA and, where applicable, the RPA;

Customer means the person to whom MSL is to provide the Services pursuant to a Contract;

Customer's Personnel means any employees, agents, distributors, sub-contractors or consultants engaged by the Customer;

Intellectual Property Rights means patents, trade marks, service marks, registered designs, applications for any of those rights, trade and business names, unregistered trade marks and service marks, copyrights, know-how, rights in designs and inventions, rights in databases and any other rights of the same or similar effect or nature, in each case in any jurisdiction;

MSL means Microbiological Solutions Limited (company number: 4218514) whose principle place of business is at Gollinrod, Walmersley, Bury, Lancashire, BL9 5NB;

Order means an order for the Services by the Customer to MSL which may comprise a valid Quotation;

Order Acknowledgement means a written confirmation from MSL to the Customer (including by email) that MSL accepts the Order;

Portal means the Cosmetic Product Notification Portal (CPNP) online notification system established for compliance with the Regulation;

Products means the Customer's cosmetic products in relation to which the Customer wishes to engage MSL to provide the Services;

Quotation means an estimate of the cost of supply of the Services given by MSL to the Customer;

RPA means an agreement between the Customer and MSL (which includes a mandate signed by the Customer) appointing MSL as the Responsible Person for the Products as specified in the RPA;

Regulation means the EU Cosmetics Regulation EC No. 1223/2009;

Report means the report provided by MSL to the Customer following provision of the Services;

Responsible Person means the person appointed as the responsible person pursuant to the Regulation in the Territory;

Responsible Person Services means acting as the Responsible Person for the Customer's Products in accordance with the obligations set out in the Regulation and pursuant to the RPA;

Samples means any samples of the Products supplied by the Customer to MSL to enable MSL to carry out the Services;

Services means the testing, compliance, surveillance, consultancy and/or other services which MSL is to supply to the Customer as detailed in the Order Acknowledgment and any applicable SLA and, where the parties have entered into a RPA, shall include the Responsible Person Services, in each case as may be amended in accordance with Condition 8;

SLA means the service level agreement setting out a description of the Services as provided by MSL to the Customer;

Territory means the European Union; and

VAT means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

1.2 In these Conditions:

1.2.1 headings are for identification and indexing purposes only and they shall not affect the construction or interpretation of these Conditions;

1.2.2 words importing the singular meaning shall include the plural meaning and vice versa;

1.2.3 references to a statutory provision includes a reference to the statutory provision as modified, re-enacted, amended or extended from time to time whether before or after the Contract date;

1.2.4 references to a person shall include natural persons, corporate or unincorporated bodies (whether or not having separate legal

personality) and that person's legal and personal representatives, successors and permitted assigns;

1.2.5 references to a party shall mean either MSL or the Customer as the context requires and parties shall mean both of them; and

1.2.6 the word including will be construed without limitation unless inconsistent with the context and working days are all days other than Saturdays, Sundays or English public holidays.

2. APPLICATION

2.1 These Conditions alone shall govern and be incorporated in every Contract for the provision of Services made by or on behalf of MSL. They shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Customer, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing.

2.2 Acceptance by the Customer of the provision of the Services shall be deemed to constitute unqualified acceptance of these Conditions.

2.3 A variation of these Conditions is valid only if it is in writing and signed by a director or authorised representative of MSL.

3. QUOTATIONS AND ACCEPTANCE

3.1 A Quotation issued by MSL does not constitute an offer. Any Quotation is given on the basis that no Contract shall come into existence until MSL despatches an Order Acknowledgement or MSL commences the Services. MSL reserves the right to withdraw or revise a Quotation at any time prior to MSL's acceptance of the Order. Any Quotation is valid for the period specified in the Quotation (or if no period is specified, a period of 14 days only from its date) provided that MSL has not previously revised or withdrawn it.

3.2 Each Order or acceptance of a Quotation for Services by the Customer shall be deemed to be an offer by the Customer to purchase the Services subject to these Conditions.

3.3 MSL's acceptance of the Customer's Order shall be effective only where MSL issues the Customer with an Order Acknowledgement or MSL commences the provision of the Services.

3.4 The Customer shall ensure that the terms of its Order are complete and accurate.

3.5 The RPA will be binding on the Customer and MSL upon it being signed by both parties.

4. PROVISION OF SERVICES

4.1 MSL will provide the Services to the Customer in accordance with the terms of the Contract and the description of the Services set out therein. MSL will not be responsible for the provision of any Services not set out in the Contract.

4.2 The Services will begin:

4.3 in respect of the Responsible Person Services, as soon as the parties enter into the RPA; and

4.4 in respect of all other Services when MSL has received all the necessary information and Samples in order to commence the Services.

4.5 Any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director or authorised representative of MSL. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MSL which is not set out in the Contract.

4.6 Subject to Conditions 8 and 14, the Services will be deemed to have completed:

4.7 in respect of the Responsible Person Services, at the end of the term set out in the RPA; and

4.8 in respect of all other Services upon the completion of the Services in accordance with the SLA and/or the Order, or the supply to the Customer of the Report.

4.9 MSL will use reasonable endeavours to comply with any timescale for the provision of the Services as set out in any Order Acknowledgment, subject to receiving all necessary information and Samples from the Customer without delay.

5. RESPONSIBLE PERSON SERVICES

- 5.1 If the Customer and MSL enter into an RPA, MSL will be appointed to provide the Responsible Person Services in respect of the Products specified in the RPA. Unless terminated earlier in accordance with its terms or Condition 14, the Contract for the provision of the Responsible Person Services will continue in force for the term set out in the RPA.
- 5.2 MSL will only be responsible for providing the Responsible Person Services:
- 5.2.1 if the parties have entered into an RPA;
- 5.2.2 the date on which MSL is listed as the Responsible Person on the label of the Products;
- 5.2.3 for so long as the RPA continues in full force and effect;
- 5.2.4 in respect of the Products designated in the RPA, and such other Products as the parties may agree in writing from time to time; and
- 5.2.5 for the purpose of compliance with the obligations of a Responsible Person in accordance with the Regulation in the Territory.
- 5.3 MSL will not be liable in any circumstances for:
- 5.3.1 the actions or omissions of any other person previously appointed as a Responsible Person (including if this was the Customer) (Prior RP), including any failure by the Prior RP to comply with the Regulation;
- 5.3.2 any failure by the Customer and/or the Customer's Personnel to comply with the directions or recommendations of MSL in acting as the Responsible Person for the Products; and
- 5.3.3 any failure by the Customer and/or the Customer's Personnel to comply with any obligations under the Regulation which do not form part of the Responsible Person Services or with any other applicable laws and/or regulations in respect of the Products and/or its business,
- and the Customer shall indemnify MSL from and against all losses, damages, costs, expenses, claims and other liabilities awarded against or incurred by MSL arising out of or in connection with any of the circumstances set out in this Condition 5.3.
- 5.4 The Customer shall inform its distribution network that MSL is appointed as the Responsible Person for the Products in the Territory and ensure that all packaging and labelling of Products for sale or distribution in the Territory contain MSL's details as the Responsible Person. MSL will provide the Customer with details of the information to be placed on the packaging and labelling of the Products and the Customer will ensure that the packaging and labelling of the Products contain all such information in any timescale notified by MSL to the Customer.
- 5.5 MSL shall not be liable for the compliance of the Customer, the Customer's Personnel and/or the Products with the laws and regulations outside the Territory, unless expressly agreed in writing by MSL.

6. CUSTOMER'S OBLIGATIONS

- 6.1 To enable MSL to perform its obligations under the Contract, the Customer shall:
- 6.1.1 co-operate fully with MSL;
- 6.1.2 obtain and maintain all necessary rights, licenses, consents authorised and/or provisions to enable it to enter into the Contract;
- 6.1.3 provide MSL with any information that it reasonably requires (including any information set out in a Quotation, an SLA and/or the RPA);
- 6.1.4 provide MSL with Samples in accordance with Condition 7;
- 6.1.5 notify MSL in writing (prior to submitting an Order) of any hazardous or banned materials which it knows or suspects may be contained in the Products or Samples; and
- 6.1.6 promptly notify MSL of any change to the Products including the formation of Products or if it ceases or intends to cease the manufacture or distribution of any of the Products in the Territory.

- 6.2 The Services are provided at the Customer's request and the Customer is responsible for verifying that the Services are suitable for its own needs.
- 6.3 If MSL's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer and/or the Customer's Personnel (including any breach of its obligations under this Condition 6, or any delay in supplying Samples or information to MSL) MSL shall not be liable for any costs, charges, expenses or any other losses sustained or incurred by the Customer and/or the Customer's Personnel arising directly or indirectly from such prevention or delay.

7. SAMPLES

- 7.1 All Samples supplied by the Customer to MSL must:
- 7.1.1 be suitable and sufficient for MSL's purposes;
- 7.1.2 be accurate samples of the Products;
- 7.1.3 not be damaged, tampered with, contaminated or otherwise unfit for MSL to properly provide the Services; and
- 7.1.4 be accompanied by a duly completed submission form and a safety data sheet in the format supplied by MSL to the Customer.
- 7.2 Upon receipt of the Samples, MSL will inspect the Samples to check that they are fit to use for the provision of the Services. If for any reason the Samples are not suitable for MSL to provide the Services, MSL will request further Samples from the Customer which the Customer must supply without delay. Samples received without a submission form described in Condition 7.1.4 will be rejected by MSL.
- 7.3 The Customer shall be responsible for the costs and risk of delivering Samples to MSL.
- 7.4 MSL will in no circumstances be liable for refunding the Customer the cost of or replacing any Samples used, lost, misplaced or damaged whilst in MSL's possession or control.
- 7.5 The Customer may request that MSL returns any unused Samples to the Customer by notifying MSL on the submission form described in Condition 7.1.4. In these circumstances MSL will return any unused Samples to the Customer at the Customer's risk and cost or make them available for collection by the Customer within 14 days. Where Samples are to be returned to Customers outside the UK, the Customer shall be solely liable for any documentation required and/or costs incurred for export of such Samples. Unless the Customer requests the return of Samples, MSL will dispose of or destroy the Samples in its discretion after completion of the Services.

8. CHANGES TO THE SERVICES

- 8.1 During the provision of the Services and particularly once MSL has had the opportunity to inspect the Samples and/or commence the Services, MSL may recommend changes or additions to the Services. In these circumstances, any changes or additions to the Services will be agreed in writing between the parties, such agreement not to be unreasonably withheld or delayed.
- 8.2 MSL shall advise the Customer of any change to the price and/or the timescale for the provision of the Services that apply to such changed or additional Services, and any other terms and conditions particular to the provision of such changed or additional Services. If these are agreed, the additional services shall be deemed to be included in the definition of Services and provided in all other respects on these Conditions.

9. PRICE

- 9.1 The price for the provision of Services shall be the price set out in the Order Acknowledgment (or if no such price is specified, shall be the price on MSL's price list in force at the relevant date) and the price for the Responsible Person Services shall be the price set out in the RPA, and in each case may comprise:
- 9.1.1 a fixed price for some or all of the Services; and/or
- 9.1.2 a monthly fee for the Services,
- and shall be subject to adjustment in accordance with Condition 8.
- 9.2 In addition to the price, MSL shall re-charge to the Customer any additional costs charged to MSL by third parties in providing the Services, including:

- 9.2.1 the cost of non-routine bacteria for specific testing requirements;
- 9.2.2 the costs for updating and maintaining the Portal; and
- 9.2.3 any Services provided by MSL which exceed any limits on quantities of Samples and/or Products as agreed between the parties.
- 9.3 MSL may at any time prior to the provision of the Services withdraw any discount from its normal prices and/or revise prices to take account of inflation, increases in costs including costs of any goods, materials, carriage, labour or overheads and the increase or imposition of any tax, duty or other levy.
- 9.4 Unless otherwise specified, VAT and any other tax, duty or levy shall be payable by the Customer in addition to the price.
- 9.5 MSL reserves the right to review its prices from time to time and increase them upon 30 days' notice to the Customer.
- 10. TERMS OF PAYMENT**
- 10.1 MSL shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after it has supplied the Services or, where the price is payable by a monthly charge, each month.
- 10.2 Payment of the price will be in accordance with the payment terms set out in the Order Acknowledgment or the RPA, or where no payment terms are set out in the same, payment of the price for the Services shall be made in pounds sterling (or where agreed in advance with MSL, US dollars) in full within 30 days of the date of MSL's invoice. Time of payment is of the essence of a Contract.
- 10.3 No payment shall be deemed to have been received until MSL has received cleared funds.
- 10.4 The Customer shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by MSL to the Customer.
- 10.5 MSL is entitled to offset any amount owing to it from the Customer against any amount owed to the Customer by MSL, under any Contract.
- 10.6 All payments payable to MSL under a Contract shall become due immediately on its termination despite any other provision.
- 10.7 In the event that the Customer fails to pay any amount due to MSL under the Contract by the due date for payment MSL reserves the right to:
- 10.7.1 suspend provision of the Services to the Customer until payment is made in full;
- 10.7.2 withhold the delivery of the Report until payment is made in full; and/or
- 10.7.3 to claim interest at the rate of eight per cent. (8%) above the base lending rate from time to time of The Bank of England accruing on a daily basis to run from the due date for payment until receipt by MSL of the full amount (including any accrued interest) whether before or after any judgment.
- 10.8 Any extension of credit allowed to the Customer may be changed or withdrawn at any time.
- 10.9 If the Customer is a new customer of MSL or if, in the opinion of MSL, the credit-worthiness of the Customer deteriorates before the provision of the Services MSL may require full or partial payment of the price prior to commencing the Services or the provision of security for payment by the Customer in a form acceptable to MSL.
- 11. WARRANTY AND LIABILITY**
- 11.1 MSL warrants that the Services will be performed by appropriately qualified and experienced personnel with reasonable care and skill and in accordance with the description of the Services set out in the SLA or the RPA (as applicable), as amended in accordance with Condition 8 provided that MSL shall be under no liability in respect of any:
- 11.1.1 inaccurate, misleading or fraudulent information, data or Samples supplied by the Customer;
- 11.1.2 reliance placed by MSL on any information given by the Customer;
- 11.1.3 failure by the Customer to inform MSL of any banned or potentially hazardous ingredients contained in the Products; and/or
- 11.1.4 failure by the Customer to rely on, or take action in respect of, the information supplied by MSL in a Report or any recommendations given by MSL for further testing.
- 11.2 The Customer must notify MSL of any claim under Condition 11.1 within three days of receiving the Report or, if the defect would not have been apparent on reasonable inspection of the Report, within three days of discovering the defect.
- 11.3 In the event of a valid claim by the Customer under Conditions 11.1 and 11.2, MSL shall investigate the claim and if liability is accepted by MSL under Conditions 11.1 and 11.2 the Customer's only remedy and MSL's only obligation is to re-perform the Services free of charge, unless otherwise agreed in writing.
- 11.4 Subject to Condition 11.6, MSL's aggregate liability to the Customer under a Contract whether for negligence, breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise shall in no circumstance exceed the cost of the Services to be provided under the relevant Contract.
- 11.5 All conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Services (save for the conditions implied by Section 2 of the Supply of Goods and Services Act 1982) are excluded from the Contract to the fullest extent permitted by law.
- 11.6 Nothing in these Conditions excludes or limits MSL's liability for death or personal injury caused by MSL's negligence, for fraud or fraudulent misrepresentation or for any matter which it would be illegal for MSL to exclude or attempt to exclude its liability under applicable law.
- 11.7 Subject to Condition 11.6, MSL is not liable for any:
- 11.7.1 indirect, special or consequential liabilities;
- 11.7.2 pure economic loss;
- 11.7.3 loss of anticipated profits, revenue or anticipated savings;
- 11.7.4 loss of goodwill or reputation; or
- 11.7.5 loss of management time,
- 11.7.6 in each case, howsoever caused.
- 12. PRODUCT LIABILITY AND RECALL**
- 12.1 The Customer expressly acknowledges and agrees that if MSL is appointed as the Responsible Person for Products it shall be entitled to remove Products from and/or itself as the Responsible Person on the Portal:
- 12.1.1 if the Customer fails to pay MSL any sums by the due date for payment;
- 12.1.2 if the Customer fails to provide MSL with any information, data or samples of Products; or
- 12.1.3 if the Customer fails to comply with any actions or recommendations given by MSL and/or an applicable authority or enforcement agency;
- 12.1.4 upon expiry or termination of the RPA.
- 12.2 The Customer expressly acknowledges and agrees that if MSL is appointed as the Responsible Person for Products it shall be entitled to withdraw or recall Products from market or sale in the Territory (a **Product Recall**) if, acting reasonably and in accordance with its appointment as Responsible Person for the Products it sees fit, including if:
- 12.2.1 any applicable authority or enforcement agency instructs or recommends a Product Recall; or
- 12.2.2 any Product is (in the reasonable opinion of MSL) found to be unsafe to use, does not comply with applicable laws or regulations or MSL otherwise deems such action to be necessary in the circumstances in its capacity as Responsible Person for such Product.
- 12.3 In the event that MSL instigates a Product Recall, MSL shall use reasonable endeavours to give the Customer notice of such Product Recall and shall seek the Customer's co-operation with the same, notwithstanding that MSL is entitled to instigate a Product Recall without notice to, or the approval of, the Customer.

- 12.4 The Customer shall bear the sole costs of any Product Recall and shall be solely responsible for the physical recall of the Products from the market.
- 12.5 The Customer shall indemnify MSL from and against all losses, damages, costs, expenses, claims and other liabilities awarded against or incurred by MSL arising out of or in connection with:
- 12.5.1 any Product Recall (whether instigated by MSL or not);
- 12.5.2 any loss of damage to property, or death or personal injury caused to any person by a Product;
- 12.5.3 any infringement or threatened infringement by the Products of a person's Intellectual Property Rights; and
- 12.5.4 any penalties, fines, enforcement actions or similar imposed by any authority or enforcement agency tasked with enforcing the Regulation,
unless caused by and to the extent that MSL has acted in breach of its role as Responsible Person for such Products.
- 13. FORCE MAJEURE**
- If MSL is prevented, hindered or delayed from or in providing the Services in accordance with these Conditions by an event which is beyond MSL's reasonable control including acts of terrorism, insurrection, riots, civil unrest and military action, the exercise of emergency powers by any local, regional or national governmental authority, fire, flood, earthquake, storm and other natural disasters, industrial action, strikes and lock-outs, blockage or embargo or the failure or delay of supplies or power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials) (a **Force Majeure Event**) MSL may, at its option:
- 13.1 suspend the provision of the Services while the Force Majeure Event continues;
- 13.2 if MSL has insufficient capacity and/or resources to meet its commitments, apportion available capacity and/or resources between its customers as it decides; or
- 13.3 terminate any Contract so affected with immediate effect by written notice to the Customer,
and MSL will not be liable for any loss or damage suffered by the Customer as a result.
- 14. TERMINATION**
- 14.1 The Services will terminate on the date set out in the Contract, unless the parties agree in writing to renew the Contract, or if the Contract does not specify an end date either party may terminate by giving the other party no less than six months' notice in writing.
- 14.2 MSL may terminate a Contract with immediate effect by notice to the Customer if:
- 14.2.1 the Customer is in material breach of an obligation under a Contract and, if the breach is capable of remedy, the Customer has failed to remedy such breach within a period of 30 days after being given notice by MSL to remedy the breach;
- 14.2.2 it has the right to terminate a Contract in accordance with Condition 13.3;
- 14.2.3 any arrangement or composition with or for the benefit of creditors which does not involve a continuation of its business in the same or substantially the same form (including any voluntary arrangement as defined in the Insolvency Act 1986) is entered into by or in relation to the Customer;
- 14.2.4 a supervisor, receiver, administrative receiver or other encumbrancer takes possession of or is appointed over, or any distress, execution or other process is levied or enforced (and is not discharged within ten working days) upon, the whole or any material part of the assets of the Customer;
- 14.2.5 the Customer is or becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or ceases to carry on the whole or a substantial part of its business;
- 14.2.6 an administrator is appointed out of court in respect of the Customer or the directors of the Customer give notice of their intention to appoint an administrator (whether out of court or otherwise);
- 14.2.7 the Customer has an administration order under Section 8 of the Insolvency Act 1986 made in respect of it;
- 14.2.8 a petition is presented (and is not discharged within 20 working days), or a resolution is passed or an order is made for the winding-up, bankruptcy or dissolution of the Customer (save for the purpose of a voluntary reconstruction or amalgamation previously approved by MSL (such approval not to be unreasonably withheld or delayed)); or
- 14.2.9 the Customer suffers any event analogous to the events set out in Conditions 14.2.3 to 14.2.8 (inclusive) in any jurisdiction in which it is incorporated or resident.
- 14.3 Without prejudice to Conditions 14.1 and 14.2, MSL may terminate a Contract with immediate effect by notice to the Customer if the Customer has failed to pay by the due date any sum due and payable by it to MSL under a Contract and such non-payment continues unremedied at the expiry of a period of five working days following notification by MSL of such non-payment by the Customer.
- 15. CONSEQUENCES OF TERMINATION OR EXPIRY**
- 15.1 Upon the expiry or termination of a Contract for any reason:
- 15.1.1 the Customer shall pay to MSL all sums due to MSL under the Contract within 10 working days of the date of expiry or termination;
- 15.1.2 MSL will update the Portal to remove MSL as the Responsible Person in respect of the Products and MSL will immediately cease to be liable for the provision of any Responsible Person Services from the date of termination or expiry;
- 15.1.3 MSL will use reasonable endeavours to assist the Customer in transferring the Responsible Person Services to the Customer or the successor Responsible Person, at the Customer's sole risk and cost within a period of 30 days from the date of termination or expiry;
- 15.1.4 MSL will be entitled to retain records and data in respect of the provision of the Responsible Person Services, provided that if for any reason the Customer requires that MSL delivers up all of such records and data to the Customer or the successor Responsible Person, MSL shall do so at the Customer's risk and cost and provided that MSL shall have no liability in respect of the provision of the Responsible Person Services under the RPA in such circumstances from the date it delivers up such records and data;
- 15.1.5 unless MSL delivers such information to the Customer or the successor Responsible Person in accordance with Condition 15.1.4, MSL shall keep product information files (PIFs) for all Products in respect of which MSL provided the Responsible Person Services for 10 years from expiry or termination;
- 15.1.6 the Customer shall remove MSL's details from all packaging and labeling of Products within 12 months and confirm to MSL in writing that this has been done; and
- 15.1.7 each party shall within five working days from receipt of a request by the other party return to the other party all original and copy documentation containing Confidential Information of the other party.
- 15.2 In the event that MSL is required to provide any continued Services to the Customer after termination or expiry of the Contract including the provision of Responsible Person Services until the packaging and labeling of Products is updated and the retention of any records, data or PIF's, MSL shall be entitled to charge the Customer its reasonable charges for the same and the Customer shall pay MSL's invoices in accordance with clause 10.
- 15.3 Termination of a Contract shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect any continuing obligations of the parties under the Contract. Without prejudice to that generality, the provisions of Conditions 9, 10, 11, 12, 15, 16, 17, 18, 19 and 20 shall survive the termination of the Contract for any reason, or the expiry of the Contract.
- 15.4 The Customer shall indemnify MSL from and against all losses, damages, costs, expenses, claims and other liabilities awarded against or incurred by MSL arising out of or in connection with compliance with the Regulation or the actions or omissions of any person appointed as Responsible Person after termination

or expiry of the Contract (including if the Customer is so appointed).

16. CONFIDENTIAL INFORMATION

- 16.1 Each party (the **Receiving Party**) shall treat any Confidential Information relating to the other party (the **Disclosing Party**) as strictly confidential except to the extent that such Confidential Information can be proved to be within the public domain at the time of disclosure other than as a result of any breach of the Contract. The Receiving Party shall not disclose such Confidential Information to any third party nor use it for any purpose except as is strictly necessary for the performance of its obligations under the Contract. For the purpose of these Conditions, **Confidential Information** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Disclosing Party to the Receiving Party or otherwise acquired by the Receiving Party in connection with these Conditions or its subject matter whether before or after the commencement of the Contract including information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property Rights, market opportunities, business affairs, financial information and other confidential information.
- 16.2 The Customer shall be free to publish the Report or any part of it as it sees fit provided that it shall not make any reference to MSL without MSL's prior written approval in each case (which shall not be unreasonably withheld or delayed).

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 All right, title and interest in and to any Intellectual Property Rights owned by or licensed to a party prior to the Contract is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom it's right to use such Intellectual Property Rights has derived).
- 17.2 All right, title and interest in and to any Intellectual Property Rights created by or on behalf of MSL during the provision of the Services and all renewals and extensions thereof shall be the property of and vest in MSL (unless otherwise agreed in writing), and the Customer assigns, including by way of present assignment of future rights, such Intellectual Property Rights to MSL with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party, together with the right to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such Intellectual Property Rights. The Customer waives any moral rights in relation to the Intellectual Property Rights.

18. NOTICES

- 18.1 A notice under or in connection with a Contract shall be in writing and shall be delivered personally or sent by recorded or registered delivery post or sent by email to the other party at its last known address or email address.
- 18.2 In the absence of evidence of earlier receipt, service of a notice is deemed to have been effected as follows:
- 18.2.1 if delivered personally, when left at the address referred to in Condition 18.1;
- 18.2.2 if sent by recorded or registered delivery post, two working days after posting it (excluding the day of posting); or
- 18.2.3 if sent by email on a working day before 5.00 p.m. at the time of its transmission and otherwise on the next working day (and where a notice is a formal notice under the Contract, including under Condition 14, any notices sent by email should be followed within two working days by notice in accordance with Condition 18.2.1 or 18.2.2).

19. NON-SOLICITATION

The Customer shall not, without the prior written consent of MSL, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from MSL or employ (or attempt to employ) any person who is, or has been, engaged by MSL in the provision of the Services.

20. TRANSFER OF RIGHTS AND OBLIGATIONS

- 20.1 Subject to clause 20.2, the Customer is entering into this Agreement for its own benefit and not for the benefit of another person. The Customer may not assign, transfer, mortgage,

charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of MSL.

- 20.2 In the event of a change of control of the Customer, the Contract will remain in full force and effect in accordance with its terms. For the purposes of these Conditions **Change of Control** means any sale or other disposal of any legal, beneficial or equitable interest in 50% or more of the equity share capital of a corporation (including control over the exercise of voting rights conferred on that equity share capital or control over the right to appoint or remove directors) and **control** has the meaning given by section 450 or section 1124 of the Corporation Taxes Act 2010.
- 20.3 In the event that the Customer transfers, assigns or otherwise disposes of any Products, brands relating to Products and/or any other Intellectual Property Rights which relate to the Products in respect of which MSL is the Responsible Person to a person so as to enable that person to manufacture, distribute and/or sell any Products which are the same as or materially similar to the Products, the Customer shall ensure that the person acquiring or benefitting from such rights enters into a new contract with MSL on materially the same terms as the then current Contract between MSL and the Customer, or an assignment or novation of the Contract between MSL and the Customer.
- 20.4 The Customer shall give MSL notice immediately upon the occurrence of any of the events set out in Conditions 20.2 or 20.3.

21. GENERAL

- 21.1 Unless otherwise stated in these Conditions, a Contract (and any documents referred to in it) constitutes the entire understanding between the parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract. No party has relied on any warranty or representation except as expressly set out in the Contract.
- 21.2 If any Condition of a Contract, (or part of a Condition), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions shall remain in force.
- 21.3 If any invalid, unenforceable or illegal Condition of a Contract would be valid, enforceable or legal if some part of it were deleted, the Condition shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 21.4 Nothing in a Contract is intended to confer on any person any right to enforce any Condition of a Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 21.5 Nothing in a Contract is intended to establish any partnership, agency or joint venture between the parties, constitute any party as employer or employee of the other, or authorise any party to make or enter into any commitments on behalf of the other party save as expressly set out therein.
- 21.6 The failure by MSL to exercise or delay by MSL in exercising any right, power or remedy provided by a Contract or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by a Contract shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
- 21.7 Each right or remedy of MSL under a Contract is without prejudice to any other right or remedy of MSL whether under the Contract or not.
- 21.8 A Contract is governed by, and shall be construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with a Contract, provided that nothing in these Conditions will prevent MSL from taking proceedings against the Customer in any other court of competent jurisdiction.