



Terms and conditions

1. Interpretation

1.1 Unless the context otherwise states or requires: (i) the terms defined in Part 1 shall have the meaning given to them when used in these Terms and Conditions; and (ii) all other capitalised words used in these Terms and Conditions shall have the meanings set out below:

"Agreement" means the contract formed between the Licensor and the Licensee comprising Part 1 (Commercial Terms), this Part 2 (the Terms and Conditions), all Schedules and any other documents expressly incorporated by reference;

"Brand Guidelines" means the guidelines, if any, produced by the Licensor (as may be amended from time to time) setting out the principles to be followed by the Licensee, including with regards to use of the Marks, Images and Promotion Materials, a copy of which (together with updates) will be provided to the Licensee and the provisions of which shall form part of this Agreement;

"Confidential Information" means all confidential information (whether in writing or otherwise and no matter in what form or on what medium held) and trade secrets relating to either of the parties and its activities and business including all financial, marketing and technology, processes, knowledge and know-how together with all details of customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future business strategy;

"Designs" means colour design drawings, models, samples and prototypes of the proposed Licensed Products and Promotion Materials;

"Intellectual Property Rights" means all patents, trademarks, trade names and domain names, service marks, rights to inventions, copyright and related rights, rights in get-up, rights in goodwill, unfair competition rights, rights in designs (whether held in physical or electronic format or otherwise howsoever), database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights (both existing and future), in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewal or extensions of, such rights and similar or equivalent rights or forms of protection in any part of the world;

"Licensor" means providing permissions to use agreed assets

"Licensee" means party requesting permissions to use agreed assets

"Net Selling Price" means the invoice value of all sales of Licensed Products Value Added Tax or similar taxes on sales;

"Promotion Materials" means any form of communication, brochure, display, publication, promotion, marketing, advertisement and in store/point of sale merchandising (including, for the avoidance of doubt, any web or mobile content) referring to or including any Marks, Images or Licensed Products;

1.2 Where there is any inconsistency between the terms set out in Part 1 and the Terms and Conditions in Part 2, the terms in Part 1 shall to the extent of such inconsistency prevail.

2. Grant of Licence

2.1 The Licensor grants to the Licensee (subject to the terms of this Agreement) a non-exclusive (unless and to the extent specified otherwise in Clause 2.6), non-transferable right within the Territory and during the Term (only):

- (a) to use the Marks on the Licensed Products and the Promotion Materials;
- (b) to reproduce the Images on the Licensed Products and the Promotion Materials; and
- (c) to sell the Licensed Products.

2.2 All rights in the Images and the Marks other than those specified above are expressly reserved to the Licensor [or the Owner (as applicable)].

2.3 The Licensee acknowledges and agrees that it shall obtain and maintain all licences, permits and approvals which are necessary or advisable for the sale and marketing of the Licensed Products in the Territory and for the performance of its duties under this Agreement.

2.4 [The rights granted under this Agreement are limited to the Territory and the Licensee shall not:

- (a) undertake advertising of Licensed Products in, or specifically aimed at, any country outside the Territory;
- (b) actively seek orders for Licensed Products from outside the Territory; or
- (c) Establish any branch dealing in, or maintain any distribution depot for, Licensed Products outside the Territory.

2.5 Subject to Clause 2.4, nothing in this Agreement shall restrict unsolicited orders for Licensed Products being accepted by the Licensee which:

- (a) may be received from any other country within the European Economic Area; or
- (b) may be received on-line from consumers in any country outside the Territory, provided always that:
 - (i) the Licensor gives no warranty that the sale of Licensed Products outside the Territory will not infringe any third party rights; and
 - (ii) the Licensee shall be responsible for and shall bear the risk of compliance with any laws or regulations that may be applicable as a result of any sales of the Licensed Products outside the Territory.]

2.6 The Licensor [and the Owner] shall remain entitled throughout the Term:

- (a) to themselves reproduce the Images and Marks [on any products and in any media [(including in the Territory)] [outside the Territory] for their own non-commercial purposes] [on any products other than the Licensed Products and in any media [(including in the Territory)][outside the Territory] for their own commercial (and non-commercial) purposes][on any products (including the Licensed Products) and in any media [(including in the Territory)][outside the Territory] for their own commercial (and non-commercial) purposes]; and
- (b) to license use of any of the Images and Marks to third parties [on any products other than the Licensed Products and in any media [(including in the Territory)][outside the Territory] [on any products and in any media [(including in the Territory)][outside the Territory]].

3. Promotion and Marketing of the Licensed Products

3.1 The Licensee shall ensure that the Licensed Products are given fair and equitable treatment and are not discriminated against in favour of any other product which the Licensee may manufacture or distribute within the Territory.

3.2 The Licensee shall not, and shall not permit any third party to, sell or otherwise dispose of or supply the Licensed Products in connection with the promotion of another product or services or the sales or promotional activities of any third party or in connection with the promotion of any political cause or religious campaign without the approval of the Licensor.

4. Production

4.1 Prior to the manufacture of any Licensed Products and Promotion Materials, the Licensee shall submit appropriate Designs of the Licensed Products (including frames, boxes, packaging and wrapping ("**Packaging**")) and Promotion Materials to the Licensor for its approval ("**the Proposed Items**").

4.2 Approval of the Proposed Items shall be at the discretion of the Licensor but shall not be unreasonably withheld. The Licensor shall communicate its decision to the Licensee within the Approval Period (unless this is not possible in the circumstances).

4.3 Unless and until the Proposed Items are approved by the Licensor, the Licensee shall not begin the manufacture of the Licensed Products or Promotion Materials (as applicable). In the event that the Proposed Items are not approved, the Licensor shall provide reasons for its decision to the Licensee and the Licensee and Licensor shall repeat the process under Clauses 4.1 and 4.2 until the Licensor's approval is given.

4.4 Before the Licensed Products or the Promotion Materials are offered for sale/otherwise supplied to the public or published (as applicable), the Licensee shall:

- (a) ensure that the Licensed Products and their Packaging are tested at a recognised laboratory and shall ensure that they achieve, as a minimum, a recognised EU, ISO or BSI standard; and
- (b) submit samples of the Licensed Products and the Promotion Materials to the Licensor for approval.

4.5 Approval of the samples submitted under Clause 4.4 shall be at the discretion of the Licensor but shall not be unreasonably withheld. The Licensor shall communicate its decision to the Licensee within the Approval Period (unless this is not possible in the circumstances).

4.6 Until such time that the Licensed Products and their Packaging and the Promotion Materials are tested and approved in accordance with Clause 4.4, the Licensee shall not offer for sale or otherwise use, supply or publish (as applicable) the Licensed Products or the Promotion Materials to the public. The Licensee shall, at the request of the Licensor, provide the Licensor with all correspondence and other data relating to such testing.

4.7 The approval provisions set out at Clauses 4.1 to 4.6 shall apply on each occasion that the Licensee proposes to alter the Licensed Products, their Packaging or the Promotion Materials.

4.8 The Licensee shall at all reasonable times during the Term provide the Licensor, at its reasonable request, with evidence that the relevant standards of quality of the Licensed Products are being complied with.

5. Quality of the Licensed Products

5.1 The Licensee shall, and shall procure that its customers shall, upon becoming aware that any of the Licensed Products do not comply with the provisions of this agreement or are otherwise defective, are or may be a threat to health and/or safety or have (if perishable) exceeded their shelf life or any period for which they are to be stocked or offered for sale, promptly withdraw from sale or recall the Licensed Products affected and immediately take such reasonable steps as may be necessary to reduce or eliminate any threat to health and/or safety and in any event take all steps as required by the Licensor to protect consumers and the reputation of the Licensor, [the Owner] and the goodwill in the Marks and Images.

5.2 Without prejudice to the provisions the Licensee shall be solely responsible for ensuring that all Licensed Products are safe and suitable for the public.

6. Warranty by the Licensor

6.1 The Licensor warrants that to the best of its knowledge and belief and without having conducted any worldwide searches for registered and unregistered rights the same or similar to those granted under this Agreement, it has the right to grant the Licensee the rights in the Marks and Images set out in this Agreement and that use of those rights in accordance with the terms of this Agreement in the Territory shall not infringe the Intellectual Property Rights of any third party.

6.2 All other warranties, whether implied by law or otherwise, are excluded to the fullest extent permissible.

7. Royalties

7.1 In consideration of the rights granted in Clause 2.1, the Licensee shall pay to the Licensor during the Term:

7.2 The Royalty is calculated on the basis of the Net Selling Price. For the purposes of this Agreement all Licensed Products shall be considered as sold when they are invoiced by the Licensee regardless of the date when payment is made.

7.3 The Licensee shall send confirmation to the Licensor's Representative (or such other individual as the Licensor may nominate) of the sums paid under Clause 7.1.

7.4 The Royalty shall be subject to review by the parties upon any renewal or extension of the Term. Any alteration to the Royalty must be agreed in writing and shall take effect from the beginning of the next Accounting Period.

7.5 The Licensee may decide in its sole discretion the price at which the Licensed Products are sold.

7.6 All Royalty payments due to the Licensor shall be paid to the Licensor in sterling.

7.7 All amounts payable to the Licensor under this Agreement are stated exclusive of VAT and shall be paid subject to VAT or any other sales tax that may be payable thereon, if any, which tax shall be paid in addition.

8. Accounting and Records

8.1 The Licensee shall keep and preserve for not less than six (6) years after the expiration of the Term accurate books, accounts, invoices and records covering all transactions relating to the subject matter of this Agreement and the Licensor or its

representatives shall be entitled, at its own expense, to inspect such records and to take extracts and copies from them for the purpose of verifying any Statement delivered to the Licensor by the Licensee.

8.2 The acceptance of any payment or any Statement made or delivered to the Licensor shall not stop or prevent the Licensor disputing any such payment or statement at any time and the acceptance by the Licensor of any payment with knowledge of a breach of any provisions of this Agreement by the Licensee shall not be deemed to waive such breach.

9. Intellectual Property

9.1 The Licensee acknowledges the exclusive ownership by the Licensor [and/or the Owner] of the Marks and Images and agrees that it will not claim any Intellectual Property Rights or other rights in the Marks or Images other than the permission to use them as specifically provided for in this Agreement. Without prejudice to the above, nothing in this Agreement shall entitle the Licensee to use the Marks or Images as part of any corporate, business or trading name or style of the Licensee.

9.2 To the extent that any Intellectual Property Rights in the Marks and/or Images arise from the Licensee's use of them, all such rights are hereby assigned to the Licensor [and/or the Owner] absolutely and with full title guarantee (by way of present and future assignment).

9.3 The Licensee agrees that on request by the Licensor (or on its behalf) at the Licensor's reasonable expense it shall execute and sign such documents and do such things as may be required by the Licensor to give effect to the assignment of rights under Clause 9.2.

9.4 Without prejudice to Clause 9.1, each party shall own and retain ownership of any Background IP provided by it and nothing contained in this Agreement shall affect the absolute and unfettered rights of each party in any Intellectual Property Rights contained in its Background IP, except that each party shall grant to the other a non-exclusive, royalty free, non-transferable licence to use its Background IP in the Territory solely for performing (and only to the extent required to perform) its obligations and exercising its rights hereunder.

9.5 The Licensee undertakes not to do or to authorise any act, which would or might jeopardise or invalidate the rights or title of the Licensor, its licensors [or the Owners] to any of the Licensor's Intellectual Property Rights, including the Marks and Images.

9.6 The Licensee shall ensure that:

- (a) each Licensed Product and all Promotion Materials shall bear the Marks in the manner stipulated in the Brand Guidelines or as otherwise notified to the Licensee by the Licensor from time to time together with a credit line as specified by the Licensor;
- (b) each reference to and use of the Marks and Images by the Licensee complies with the principles set out in the Brand Guidelines and the instructions of the Licensor and is accompanied by a credit in a form specified by the Licensor; and

9.7 The Licensee shall not:

- (a) use the Marks or Images:
 - (i) in any way which might prejudice their distinctiveness or validity or the goodwill of the Licensor [or the Owner] therein; or
 - (ii) otherwise than in good faith for the sole purpose of manufacturing, promoting and/or selling the Licensed Products during the Term; and
- (b) use any trademarks or trade names similar to the Marks or Images as to be likely to cause confusion or deception; or
- (c) seek to register as a trade mark, company name, domain name or key word advertising tag anywhere in the world any mark, name or device the same as or confusingly similar to the Marks or Images.

9.8 The Licensee shall inform the Licensor immediately if it becomes aware of or suspects that any of the Marks or Images have been or may be intended to be reproduced, distributed or communicated to the public by a third party without the authority of the Licensor.

9.9 The provisions of this Clause 9 shall survive termination of this Agreement.

10. Changes

10.1 No change to this Agreement or the Licensed Products, Marks and Images licensed under it shall be valid unless made in writing and signed by the parties.

11. Warranties and Indemnities

11.1 Each party warrants to the other that it has full power to enter into this Agreement and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

11.2 Nothing in this Agreement shall have the effect of excluding or limiting any liability for:

- (a) (subject to compliance with Clause 11.3) any third party claim for breach of its Intellectual Property Rights;
- (b) any claim for death or personal injury caused by negligence or for fraud or any other liability that cannot, as a matter of law, be limited or excluded; or
- (c) in respect of the Licensee, any product liability claim.

11.3 If any claim arises within the scope of this agreement under which a party ("the **Indemnifying Party**") is required to indemnify the other party (the "**Indemnified Party**"), the Indemnified Party shall:

- (a) as soon as reasonably practicable, give written notice of the Relevant Claim to the Indemnifying Party, specifying the nature of the Relevant Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Relevant Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Indemnified Party may settle the Relevant Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining the Indemnifying Party's consent) if the Indemnified Party reasonably believes that failure to settle the Relevant Claim would be prejudicial to it in any material respect;
- (c) give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its records so as to enable the Indemnifying Party and its professional advisers to examine them and to take copies (at the Indemnifying Party's expense) for the purpose of assessing the Relevant Claim; and
- (d) subject to the Indemnifying Party providing security to the Indemnified Party to the Indemnified Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses that may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Relevant Claim.]

11.4 The Licensee's liabilities under this Agreement shall not be deemed to be released or limited by the Licensee taking out the insurance policies referred to in this agreement

12. Termination

12.1 This Agreement shall commence on the Commencement Date and, subject to the sales the Licensee may request a reprint of agreed products in schedule 1. This would be subject to a new agreement.

13. Rights on Termination

13.1 Termination of this Agreement, for whatever reason, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provisions impliedly or expressly stated to survive termination. Specifically, in the event of termination of this Agreement, the Licensee shall not be relieved of any of its liabilities up to the date of termination.

14. Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR")

14.1 The Licensor acknowledges that the Licensee [and the Owner] are subject to the requirements of the FOIA and the EIR and the Licensee shall assist and cooperate with the Licensor [and the Owner] to enable them to comply with their information disclosure obligations under the same.

14.2 The Licensor shall and shall ensure that its employees, agents, sub-contractors and any other representatives shall:

- (a) transfer any request for **Information** (as defined within the FOIA) under the FOIA or the EIR (a "**Request for Information**") to the Licensor as soon as practicable after receipt and in any event within five business days of receiving a Request for Information;

- (b) provide the Licensee with a copy of all Information in its possession or power in the form that the Licensee requires within five business days (or such other period as the Licensee may specify) of the Licensor requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Licensee to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

14.3 The Licensor [and the Owner] shall be responsible for determining whether any Information:

- (a) is exempt from disclosure in accordance with the provisions of FOIA or EIR; and/or
- (b) is to be disclosed in response to a Request for Information.

14.4 Without prejudice to Clauses 14.3 and 16.2, the Licensor acknowledges that the information in Part 1 of the Schedules is confidential and commercially sensitive, the disclosure of which may be damaging to the business interests of the Licensee. The Licensee however acknowledges that the Licensor [and the Owner] may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive provided that the Licensor [and the Owner] take reasonable steps, where appropriate, to give the Licensee advanced notice, or failing that, to draw the disclosure to the Licensee's attention as soon as practicable after any such disclosure.] **[FOR USE IF LICENSOR / OWNER IS A PUBLIC BODY. OTHERWISE DELETE IN ITS ENTIRETY]**

14.5 Each party confirms that they will only process personal data in accordance with the data controller's instructions;

Take appropriate technical and organizational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

Not transfer personal data without the data controller's written consent.

15. Charitable Institutions (Fundraising) Regulations 1994

The Owner is a party to this Agreement for the sole purpose of satisfying the prescribed requirements of the Charitable Institutions (Fundraising) Regulations 1994 made under section 59(6) of the Charities Act 1992 and for no other purpose. The parties agree that the Owner shall incur no liability under or in connection with this Agreement, whether for breach of contract or in any other way whatever. **[FOR USE IF OWNER IS A PUBLIC BODY. OTHERWISE DELETE IN ITS ENTIRETY]**

16. General

16.1 **Confidentiality.** Each party shall keep in strict confidence all scientific and commercial know-how, marketing opportunities, projects, processes and initiatives which are of a confidential nature and have been disclosed to it ("the **Receiving Party**") by the other party [(or, in the case of the Licensee, by the Licensor or the Owner)] or its agents (the "**Disclosing Party**") and any other confidential information concerning the Disclosing Party's business which the Receiving Party may obtain (but excluding information that the Receiving Party already knew, that becomes public through no fault of the Receiving Party, that was independently developed by the Receiving Party or was lawfully given to the Receiving Party by a third party) (together "**Confidential Information**") and the Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging its obligations to the Disclosing Party and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind it.

16.2 **Transparency.** The Licensor acknowledges that the United Kingdom Government's transparency agenda requires that certain agreements (which may include this Agreement) and tender documents are published on a designated, publicly searchable website. The Licensor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Agreement is not Confidential Information. The Licensee shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Agreement, the Licensor hereby gives consent for the Licensee to publish this Agreement in its entirety (but with any information which the Licensor considers to be exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Agreement, to the general public.]

16.3 **Non-Discrimination.** The Licensee shall not discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief or age and without prejudice to the generality of the foregoing the Licensee shall not discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and 2005, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment of the same.

- 16.4 Anti-Bribery. The Licensee shall not, in the performance of its obligations under this Agreement, act in a manner that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010. The Licensee shall comply with any policy or procedure governing anti-bribery imposed by the Licensor [and/or the Owner] and warrants that in performing its obligations under this Agreement it will not induce or improperly reward any third party, including any public official, to act improperly. For the purposes of this clause, to act improperly shall be interpreted in accordance with the Bribery Act 2010. The Licensor shall be entitled to terminate this Agreement immediately and to recover from the Licensee the amount of any loss resulting from a breach of Clause 16.4.
- 16.5 Publicity. Any press announcements or publicise this Agreement shall not do anything or cause anything to be done, which may damage the reputation of both parties into disrepute.
- 16.6 Notices. Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing addressed to the other party at the address stated in Part 1 of this Agreement or such other address as may be notified in accordance with this Clause 16.6.
- 16.7 Assignment. Both parties shall not assign, sub-license, sub-contract or otherwise transfer to any third party any of its rights or obligations under this Agreement unless agreed, the Licensor acknowledges that the licenses will have to contract a manufacturer to produce agreed products.
- 16.8 Third party rights. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 16.9 Severance. In the event that any provision (including any distinct sub-clause) of this Agreement is held to be illegal, invalid, void or unenforceable, it shall be severed from the remaining provisions of this Agreement, which shall continue in full force and effect.
- 16.10 Waiver. Failure or neglect by either party to enforce any provision of this Agreement shall not be construed nor shall be deemed to be a waiver of that party's rights under this Agreement and shall not prejudice that party's rights to take subsequent action.
- 16.11 Entire agreement. This Agreement contains the entire agreement between the parties in relation to the commercial exploitation of the Marks and Images by the Licensee. It supersedes any prior agreements, representations, arrangements or undertakings in relation to such subject matter, provided that nothing in this clause shall exclude or limit liability for fraudulent misrepresentation.
- 16.12 Dispute Resolution. If a dispute arises out of or in connection with this Agreement the parties will, following a written request from one to the other, attempt in good faith to resolve the dispute: (a) through discussions between the Licensor's Representative and the Licensee's Authorised Representative failing which; (b) through discussions between the Licensor's representative and the Licensee's representative [failing which (c) the parties agree to attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator and place of mediation shall be nominated by CEDR Solve]. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute through the discussions referred to above in this Clause 16.12, and either the dispute has not been settled within two weeks of the discussions detailed at Clause [16.12(c)] above occurring or the other party has failed to participate in the discussions, provided that the right to issue proceedings is not prejudiced by a delay.
- 16.13 Law. This Agreement shall be governed by and interpreted in accordance with Scots law and the parties submit to the exclusive jurisdiction of the Scottish courts.
- 16.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.