

## **1. Application of Conditions**

1.1 Pack Smart Group Limited shall supply and the Customer shall purchase the Goods and Services in accordance with the agreed quotation and associated schedules (if applicable) which are subject to these Conditions.

1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

## **2. Definitions and Interpretation**

2.1 In these Conditions:-

"Business Day" means any day other than a Saturday, Sunday or bank holiday;

"the Customer" means the person who accepts a quotation or offer of Pack Smart Group Limited for the sale of the Goods and supply of the Services, or whose

order for the Goods and Services is accepted by Pack Smart Group Limited;

"Commencement Date" means the commencement date for this agreement as set out in the quotation and associated schedules;

"the Contract" means the contract for the purchase and sale of the Goods and supply of the Services under these conditions;

"these Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any

special terms and conditions agreed in writing between the Customer and Pack Smart Group Limited;

"the Delivery Date" means the date or dates on which the Goods and Services are to be delivered as stipulated in the Customer's order and accepted by

Pack Smart Group Limited;

"the Goods" means the goods (including any instalment of the goods or any parts for them) which Pack Smart Group Limited is to supply in accordance with

these Conditions;

"month" means a calendar month;

"the Services" means the Services to be provided to the Customer as set out in the quotation and schedules (if applicable);

"the Supplier" means Pack Smart Group Limited, a company registered in England under 06850085;

"writing" includes any communications effected by telex, facsimile transmission, electronic mail or any comparable means.

"Intellectual Property Rights" means all patents and patent applications, registered or unregistered design rights, copyright, rights in databases, registered trade marks or applications for registration,

unregistered trade mark rights, domain names, know how or similar, such rights subsisting or arising anywhere in the world

“End Users” means the Customers end consumer or persons whose Personal Data the Customer supplies to Pack Smart Group Limited.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **3. Basis of Sale and Service**

3.1 Pack Smart Group Limited's employees or agents are not authorised to make any representations concerning the Goods and Services unless confirmed by Pack Smart Group Limited in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Pack Smart Group Limited.

3.3 Sales literature, price lists and other documents issued by Pack Smart Group Limited in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. An order placed by the Customer may not be withdrawn cancelled or altered prior to acceptance by Pack Smart Group Limited and no contract for the sale of the Goods and Services shall be binding on Pack Smart Group Limited unless Pack Smart Group Limited has issued a quotation which is expressed to be an offer to sell the goods and services or has accepted an order placed by the Customer by whichever is the earlier of:-

- a) Pack Smart Group Limited's written acceptance;
- b) delivery of the Goods; or
- c) Pack Smart Group Limited's invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Pack Smart Group Limited shall be subject to correction without any liability on the part of Pack Smart Group Limited.

### **4. The Goods**

4.1 No order submitted by the Customer shall be deemed to be accepted by Pack Smart Group Limited unless and until confirmed in writing by Pack Smart Group Limited's authorised representative.

4.2 The specification for the Goods shall be those set out in Pack Smart Group Limited's sales documentation unless varied expressly in the Customer's order (if accepted by Pack Smart Group Limited). The Goods will only be supplied in the minimum units (or multiples) stated in Pack Smart Group Limited's quotation or price list or as otherwise specified. Orders received for quantities other than these will be adjusted accordingly, illustrations, photographs or descriptions whether in

catalogues, brochures, price lists, web site or other documents issued by Pack Smart Group Limited are intended as a guide only and shall not be binding on Pack Smart Group Limited.

4.3 Pack Smart Group Limited reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to Pack Smart Group Limited's specification, which do not materially affect their quality or performance.

4.4 No order which has been accepted by Pack Smart Group Limited may be cancelled by the Customer except with the agreement in writing of Pack Smart Group Limited on the terms that the Customer shall indemnify Pack Smart Group Limited in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Pack Smart Group Limited as a result of cancellation.

4.5 Where the Customer is supplying Goods to Pack Smart Group Limited for use in further processing, manufacture, assembly, insertion or sortation by Pack Smart Group Limited then these are supplied on a Consignment basis.

4.6 Pack Smart Group Limited will acknowledge receipt of Goods.

4.7 Insurance of the Goods will be the responsibility of the Customer unless otherwise agreed in writing by Pack Smart Group Limited and the Customer.

4.8 It is the responsibility of the Customer to ensure that the Goods required by Pack Smart Group Limited to provide the Goods or Services as confirmed in the quotation and schedules (if applicable) are delivered and accepted by Pack Smart Group Limited on or before the Delivery Dates identified in the quotation and schedules (if applicable). Pack Smart Group Limited is not held liable for non delivery of Goods or Services if the Customer is unable to meet the Delivery Dates.

## **5. The Services**

5.1 With effect from the Commencement Date Pack Smart Group Limited shall, in consideration of the Fees being paid in accordance with the Terms of Payment will provide the services expressly identified in the quotation and schedules (if applicable) or otherwise agreed under this agreement.

5.2 Pack Smart Group Limited will use reasonable care and skill to perform the services identified in the quotation and schedules (if applicable) or otherwise agreed under this agreement.

5.3 Pack Smart Group Limited shall use all reasonable endeavours to complete its obligations under the Schedule, but time will not be of the essence in the performance of these obligations.

## **6. Commencement and Duration**

6.1 The Services supplied under these Terms and Conditions shall be provided by Pack Smart Group Limited to the Customer from the date of acceptance by the Customer of Pack Smart Group Limited's quotation.

6.2 Services supplied under these Terms and Conditions shall continue to be supplied for the agreed 30 day rolling Term unless terminated in accordance with clause 21

## **7. Pack Smart Group Limited's Obligations**

7.1 Pack Smart Group Limited shall provide the Services with reasonable care and skill in accordance with good industry practice and its own established internal procedures.

7.2 Pack Smart Group Limited shall deal with any complaints received from End Users regarding its provision of Goods and Services directly, unless Pack Smart Group Limited decides, in its absolute discretion, to escalate the complaint, in which case such complaints shall be reported to the Customer where Pack Smart Group Limited deems it appropriate.

## **8. The Customers Obligations**

8.1 The Customer shall provide in a timely manner all material assistance, information and records as Pack Smart Group Limited reasonably requires to enable it to perform the Services and to ensure that such information and records are complete and accurate.

8.2 Obtain all necessary licences and consents and comply with all relevant legislation in relation to the Goods and the Services in all cases before the date on which the Services are to start;

8.3 Where Pack Smart Group Limited will be despatching Goods to End Users on Customer's behalf, the Customer shall ensure that the Goods are delivered to Pack Smart Group Limited's warehouse (such address to be specified in writing) by the delivery dates determined in the Quotation and schedules (if applicable).

8.4 Where the Customer is informed by Pack Smart Group Limited of any complaints it has received from End Users, in accordance with clause 7.2 above, Customer shall promptly deal with these complaints and shall indemnify Pack Smart Group Limited in relation thereto.

8.5 Where the Customer has agreed to provide any exclusive or limited edition or signed or other unique Goods or offers or promotional goods or specially packaged items, the Customer guarantees that such Goods will be delivered to Pack Smart Group Limited in suitable quantities and in accordance with the delivery dates identified in the quotation and schedules (if applicable).

8.6 Any Goods supplied to Pack Smart Group Limited must be accompanied by appropriate documentation including listing contents where items are supplied in outer packaging. Pack Smart Group Limited reserves the right to open any item supplied in such manner to establish nature of Goods and ensure that such Goods are legal and where appropriate covered by Pack Smart Group Limited insurance. Pack Smart Group Limited will reseal original packaging.

8.7 Customer shall deliver all Products to Pack Smart Group Limited on consignment unless otherwise agreed in writing between Pack Smart Group Limited and the Customer.

8.8 If Pack Smart Group Limited's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of the Customer, its agents, subcontractors or employees, Pack Smart Group Limited shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

## **9. Change Control**

9.1 If either party wishes to change the scope or execution of the Goods or Services, it shall submit details of the requested change to the other in writing.

9.2 If either party requests a change to the scope or execution of the Services, Pack Smart Group Limited shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the change;
- b) any variations to Pack Smart Group Limited's charges arising from the change;
- c) any other impact of the change on these Terms and Conditions.

Pack Smart Group Limited may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. Pack Smart Group Limited may, from time to time and subject to Customer's prior written consent, which shall not be unreasonably withheld or delayed, change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least One (1) months notice of any change. If the Customer instructs Pack Smart Group Limited to proceed with the change, Pack Smart Group Limited has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of this Agreement to take account of the change.

## **10. Price**

10.1 The price of the Goods and Services shall be the price listed in quotation current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by Pack Smart Group Limited and the Customer.

10.2 Where Pack Smart Group Limited has quoted a price for the Goods other than in accordance with Pack Smart Group Limited's published price list the price quoted shall be valid for Thirty (30) days only or such lesser time as Pack Smart Group Limited may specify.

10.3 Pack Smart Group Limited reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and Services to reflect any increase in the cost to Pack Smart Group Limited which is due to any factor beyond the control of Pack Smart Group Limited (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Pack Smart Group Limited adequate information or instructions.

10.4 Except as otherwise stated under the terms of any quotation or in any price list of Pack Smart Group Limited, and unless otherwise agreed in writing between the Customer and Pack Smart Group Limited, all prices are inclusive of Pack Smart Group Limited's charges for packaging and transport as specified in the quotation.

10.5 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to Pack Smart Group Limited.

## **11. Payment**

11.1 All payments required to be made pursuant to this Agreement by either party shall be made within Twenty One (21) days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

11.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of the price or any other sum due under these terms and conditions then Pack Smart Group Limited shall, without prejudice to any right which Pack Smart Group Limited may have pursuant to any statutory provision in force from time to time, have the right to charge the Customer interest on a daily basis at an annual rate equal to the aggregate of Seven (7) per cent and the base rate of Barclays Bank Plc from time to time on any sum due and not paid on the due date. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgement.

11.3 All payments shall be made to Pack Smart Group Limited as indicated on the form of acceptance or invoice issued by Pack Smart Group Limited.

## **12. Delivery and Performance**

12.1 Delivery of the Goods shall be made by Pack Smart Group Limited delivering the Goods to the place or places in the United Kingdom specified in the quotation and schedules (if applicable).

12.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by Pack Smart Group Limited in writing. The Goods may be delivered by Pack Smart Group Limited in advance of the Delivery Date upon giving reasonable notice to the Customer.

12.3 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, Pack Smart Group Limited shall be entitled upon given written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provision of Condition 10.1 of these Conditions risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to Pack Smart Group Limited all costs and expenses including storage and insurance charges arising from such failure.

12.4 With effect from the Commencement Date Pack Smart Group Limited shall, in consideration of the amount(s) being paid in accordance with the quotation will provide the services expressly identified in the schedule or otherwise agreed under this agreement.

## **13. Non-Delivery of Goods and Services**

13.1 If Pack Smart Group Limited fails to deliver the Goods or Services and any of them on the Delivery Date other than for reasons outside Pack Smart Group Limited's reasonable control or the Customer's or its carrier's fault:-

a) if Pack Smart Group Limited delivers the Goods and Services at any time thereafter Pack Smart Group Limited shall have no liability in respect of such late delivery;

b) if the Customer gives written notice to Pack Smart Group Limited within Seven (7) business days after the Delivery Date and Pack Smart Group Limited fails to deliver the Goods and Services within a further Seven (7) Business Days after receiving such notice the Customer may cancel the order and Pack Smart Group Limited's liability shall be limited to the excess (if any) of the cost of the Customer

(in the cheapest available market) of similar goods to those not delivered over the price of the Goods not delivered..

**14. Risk and Retention of Title**

14.1 Risk of damage to or loss of the Goods shall pass to the Customer at:

a) in the case of Goods to be delivered at Pack Smart Group Limited's premises, the time when Pack Smart Group Limited notifies the Customer that the Goods are available for collection;

b) in the case of Goods to be delivered otherwise than at Pack Smart Group Limited's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Pack Smart Group Limited has tendered delivery of the Goods; or

c) in the case of goods being installed by Pack Smart Group Limited, the time that Pack Smart Group Limited notifies the Customer that the installation is complete.

14.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Customer until Pack Smart Group Limited has received in cash or cleared funds payment in full of the price of the Goods and Services associated with the attainment, storage and management of Goods.

14.3 Sub-clause 10.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Customer until Pack Smart Group Limited has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by Pack Smart Group Limited and the Customer has repaid all moneys owed to Pack Smart Group Limited, regardless of how such indebtedness arose.

14.4 Until payment has been made to Pack Smart Group Limited in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall be in possession of the Goods as bailee for Pack Smart Group Limited and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by Pack Smart Group Limited and shall insure the Goods against all reasonable risks.

14.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Pack Smart Group Limited, but if the Customer does so all money owing by the Customer to Pack Smart Group Limited shall (without prejudice to any other right or remedy of Pack Smart Group Limited) forthwith become due and payable.

14.6 Pack Smart Group Limited reserves the right to repossess any Goods in which Pack Smart Group Limited retains title without notice. The Customer irrevocably authorises Pack Smart Group Limited to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which Pack Smart Group Limited retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-clause 10.4.

14.7 The Customer's right to possession of the Goods in which Pack Smart Group Limited maintains legal and beneficial title shall terminate if;

a) The Customer commits or permits any material breach of his obligations under these Conditions;

b) The Customer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with his creditors;



c) The Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;

d) The Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

### **15. Assignment**

15.1 Pack Smart Group Limited may assign the Contract or any part of it to any person, firm or company.

15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Pack Smart Group Limited.

### **16. Defective Goods**

16.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery "condition and contents unknown" the Customer gives written notice of such defect to Pack Smart Group Limited within Three (3) business days of such delivery, Pack Smart Group Limited shall at its option:-

a) replace the defective Goods within Fourteen (14) business days of receiving the Customer's notice; or

b) refund to the Customer the price for the goods which are defective;

c) but Pack Smart Group Limited shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as aforesaid.

16.2 No Goods may be returned to Pack Smart Group Limited without the prior agreement in writing of Pack Smart Group Limited. Subject thereto any Goods returned which Pack Smart Group Limited is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at Pack Smart Group Limited's sole discretion Pack Smart Group Limited shall refund or credit to the Customer the price of such defective Goods but Pack Smart Group Limited shall have no further liability to the Customer.

16.3 Pack Smart Group Limited shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow Pack Smart Group Limited's instructions (whether oral or in writing), misuse or alteration of the Goods without Pack Smart Group Limited's approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.

16.4 Goods, other than defective Goods returned under Conditions 16.1 or 16.2, returned by the Customer and accepted by Pack Smart Group Limited may be credited to the Customer at Pack



Smart Group Limited's sole discretion and without any obligation on the part of Pack Smart Group Limited.

16.5 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

16.6 The Customer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory handling and sale of the Goods by the Customer is carried out in accordance with directions given by Pack Smart Group Limited or any competent governmental or regulatory authority and the Customer will indemnify Pack Smart Group Limited against any liability loss or damage which Pack Smart Group Limited might suffer as a result of the Customer's failure to comply with this condition.

### **17. Customer's Default**

17.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Pack Smart Group Limited, Pack Smart Group Limited shall be entitled to: -

- a) cancel the order or suspend any further deliveries of Goods and Services to the Customer.
- b) appropriate any payment made by the Customer to such of the Goods and Services (or the goods supplied under any other contract between the Customer and Pack Smart Group Limited) as Pack Smart Group Limited may think fit (notwithstanding any purported appropriation by the Customer); and

17.2 This condition applies if: -

- a) the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
- b) the Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- d) the Customer ceases, or threatens to cease, to carry on business; or
- e) Pack Smart Group Limited reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

17.3 If Condition 17.2 applies then, without prejudice to any other right or remedy available to Pack Smart Group Limited, Pack Smart Group Limited shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **18. Liability**

18.1 Except in respect of death or personal injury caused by the Company's negligence, the Company will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of this contract, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Company's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.

18.2 The Customer shall indemnify Pack Smart Group Limited against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agent or employees.

18.3 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

18.4 Pack Smart Group Limited shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of Pack Smart Group Limited's obligations if the delay or failure was due to any cause beyond Pack Smart Group Limited's reasonable control.

18.5 The total liability of Pack Smart Group Limited in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement is the price paid for the Goods and Services under this Agreement.

## **19 Limitation of liability**

The Pack Smart Group Limited has obtained insurance cover for individual claims. Liability shall not exceed the value of the service provided. Liability shall be limited to the reasonable costs and expenses incurred by the Customer for the service provided. Pack Smart Group Limited shall have no liability for any failure foreseeable or otherwise to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Pack Smart Group Limited with adequate delivery instructions or any other instruction that are relevant to the supply of the Goods

Nothing in this Contract shall limit or exclude the Pack Smart Group Limited's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987[; or]
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

Subject to clause 18:

(f) Pack Smart Group Limited shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;

## **20 Indemnity**

20.1 Pack Smart Group Limited shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

(a) Pack Smart Group Limited's breach or negligent performance or non-performance of this agreement;

(b) any claim made against the Customer by a third party arising out of or in connection with the provision of the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by Pack Smart Group Limited its employees, agents or subcontractors;

(c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of Pack Smart Group Limited its employees, agents or subcontractors.

## **21. Termination**

21.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other immediately on giving notice to the other if:

a) the other party commits a material breach of any of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 30 working days of that party being notified in writing of the breach; or

b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a

winding-up order of the other party; or

c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint

a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

f) the other party ceases, or threatens to cease, to trade; or

g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

21.2 On termination of this agreement for any reason:

a) the Customer shall immediately pay to Pack Smart Group Limited all of Pack Smart Group Limited's outstanding unpaid invoices and interest and, in respect of Goods and

Services supplied but for which no invoice has been submitted, Pack Smart Group Limited may submit an invoice, which shall be payable immediately on receipt;

b) Pack Smart Group Limited shall return all stock to the Customer within a reasonable time to be agreed between Pack Smart Group Limited and Customer, subject to the fulfilment

of requirements of the Customer existing prior to termination.

c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **22. Warranties**

22.1 Pack Smart Group Limited warrants that:

a) it has the necessary rights to enter into this agreement and perform the obligations contained within these Terms and Conditions and the quotation and schedules (if

applicable); and

b) it shall perform the Services in accordance with all applicable laws and regulations.

22.2 The Customer warrants that:

a) it has the full capacity and all necessary rights to enter into this agreement;

b) it has obtained all necessary permissions and consents to allow Pack Smart Group Limited to perform the Services and to supply the Goods and Services to the End Users on its behalf and that the Goods and Services do not infringe the rights of any third party, comply with all health and safety and other applicable laws and regulations

and are of a satisfactory quality and fit for their purpose

c) the Content does not infringe the rights of any third party and complies with all applicable laws and regulations

## **23. Communications**

23.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

a) in the case of communications to Pack Smart Group Limited to its registered office or such changed address as shall be notified to the Customer by Pack Smart Group Limited; or

b) in the case of the communications to the Customer to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer

set out in any document which forms part of the Contract or such other address as shall be notified to Pack Smart Group Limited by the Customer.

23.2 Communications shall be deemed to have been received:

a) if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or

b) if delivered by hand, on the day of delivery; or

c) if sent by fax or electronic mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

23.3 Communications addressed to Pack Smart Group Limited shall be marked for the attention of the Customers' Account Manager as detailed in the quotation.

## **24. Intellectual Property Rights**

24.1 All Intellectual Property Rights in the Website including the domain name and any Intellectual Property Rights created by Pack Smart Group Limited in the provision of the Goods and Services shall belong absolutely to and remain at all times vested with Pack Smart Group Limited unless otherwise agreed in writing between Pack Smart Group Limited and Customer.

24.2 All Intellectual Property Rights in the Products, any content provided by the Customer in order Pack Smart Group Limited to provide the Services, the brand and any trademarks or trade names of the Customer used shall belong absolutely to Customer or its licensors shall remain at all times vested in Customer or its licensors.

24.3 With regard to Trademarks:

a) Customer hereby grants to Pack Smart Group Limited the non-exclusive right to use the Trademarks in the promotion, advertisement and sale of the Goods and Services in accordance with the Terms of this Contract.

b) Pack Smart Group Limited shall not, without the prior written consent of the Customer, alter or make any addition to the labelling or packaging of the Goods displaying the Trade Marks, and shall not alter, deface or remove in any manner any reference to the Trade Marks, any reference to the Customer or any other name attached or affixed to the Goods or their packaging or labelling unless otherwise instructed or agreed in the quotation and schedules (if applicable) or in writing between the Customer and Pack Smart Group Limited.

## **25. Confidentiality**

25.1 Each of Pack Smart Group Limited and the Customer undertakes to the other to:

a) keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received directly or indirectly as a result of the discussions leading up to or the entering into or performance of this Agreement (the Information);

b) not, without the other's written consent, to disclose the Information in whole or in part to any other person save those of its employees involved in the supply of Goods and Services and who have a need to know the same or; and

c) to use the Information solely in connection with the supply of Goods and Services and not for its own or the benefit of any third party.

25.2 The provisions of this clause shall not apply to the whole or any part of the Information to the extent that it is:

a) trivial or obvious, already in the other's possession other than as a result of a breach of this clause, or lawfully in the public domain

b) is required to be disclosed to Her Majesty's Revenue and Customs (for any legal reason whatsoever), the courts of any competent jurisdiction, or to any government agency or financial authority.

25.3 Each of Pack Smart Group Limited and the Customer undertakes to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of the Information and the provisions of this clause and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause.

25.4 This condition shall survive termination of this agreement however arising.

## **26 Data protection**

26.1 The following definitions apply in this clause

(i) Agreed Purposes: for ordering and distribution purposes

(j) Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisation measures: as set out in the Data Protection Legislation.

(k) Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

(l) Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

(m) Shared Personal Data: the personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following types of information relevant to

the following categories of data subject: Full Names; contact details including address, postcode, email address and telephone numbers

(n) UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

26.2 This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

26.3 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall constitute a material breach.

Each Party shall:

26.3.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes.

26.3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or transferred to one or more of the Permitted Recipients, their successors and assignees.

26.3.3 process the Shared Personal Data only for the Agreed Purposes.

26.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients.

26.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement.

26.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

26.3.7 not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that:

26.3.7.1 the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or

26.3.7.2 there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or

26.3.7.3 the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or

26.3.7.4 one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

26.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:



26.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data.

26.4.2 promptly inform the other party about the receipt of any data subject rights request.

26.4.3 provide the other party with reasonable assistance in complying with any data subject rights request.

26.4.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible.

26.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators.

26.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation.

26.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;

26.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

26.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause and

26.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

## **27. Force Majeure**

27.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 27.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

27.2 Sub-clause 27.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

27.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

27.4 If and when the period of such incapacity exceeds Six (6) months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

**28. Waiver**

28.1 No waiver by Pack Smart Group Limited of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**29. Severance**

29.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

**30. Third Party Rights**

30.1 A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

**31. Governing Law and Jurisdiction**

31.1 These terms and conditions shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

**END OF STANDARD TERMS AND CONDITIONS OF GOODS AND SERVICES**