

# PANDORA GLOBAL TERMS & CONDITIONS OF PURCHASE

**VERSION 1.0**

PANDORA

Pandora Terms and Conditions of Purchase | V.1.0 |

Classification: Pandora Public

## 1. DEFINITIONS

1.1 In these Conditions, unless the context otherwise requires, all capitalised terms have the following meanings:

**Affiliate** means, with respect to a legal entity, any other legal entity which is from time to time a Subsidiary or Holding Company of that entity or a Subsidiary or Holding Company of any such Holding Company;

**Applicable Laws** means any applicable law, statute, treaty, rule, regulation, code or other pronouncement having the effect of law, including relating to: (i) anti-bribery and corruption; (ii) data protection; (iii) competition; and (iv) trade sanctions, and including those of the countries, states and localities in which the relevant Party operates;

**Background IPR** means any of the following, whether created before, during or after the date of the Purchase Order: (i) a Party's pre-existing trademarks, logos, copyrights and other Intellectual Property Rights which are owned by that Party or its third party licensors; (ii) in relation to Supplier, the methods and systems Supplier uses to provide the Services (unless provided by Customer or developed by Supplier specifically for Customer); and (iii) in relation to Customer, the Customer Materials;

**Change of Control** means Supplier undergoing a change of Control, or the assignment or transfer by Supplier to any third party of all or the majority of that part of its business involved in the performance of the Purchase Order;

**Conditions** means these terms and conditions as they may be amended from time to time;

**Confidential Information** means: (i) any information or data of a sensitive and/or confidential nature (including any personal data within the meaning of applicable law) in any form and via any medium, concerning Provider and its Group, and their respective businesses (including employees, customers, and suppliers) that is disclosed or made available directly or indirectly to Recipient or its Representatives, whether on or after the date of the Purchase Order and which is marked or classified as "Confidential" (or similar) or which would reasonably be considered to be confidential in the relevant circumstances; (ii) notes, reviews, analyses, reports and any other information derived from any of the information described in this definition; (iii) information contained in a pending, non-published patent application of Customer; (iv) know-how and trade secrets (as defined in accordance with EU Directive 2016/943); and (v) the Purchase Order;

**Control** means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person: (i) by means of the holding of shares, or the exercise of voting powers, in relation to that or any other body corporate; or (ii) by virtue of any powers conferred by the constitutional, corporate or any other documents regulating that or any other body corporate;

**Customer** means the purchaser of the Products and/or Services as stated in the Purchase Order;

**Customer Materials** means all data, materials, facilities and equipment supplied by or on behalf of Customer to Supplier;

**DDP** means Delivered Duty Paid Incoterms 2020;

**Defective Products** means any Product that does not comply with Clause 6.1 at the time of delivery or at any time during the Warranty Period, and **Defect** will be construed accordingly;

**Deliverables** all documents, products and materials developed by Supplier or its Representatives as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**Force Majeure Event** means the following, to the extent that they are outside the Affected Party's (as defined in Clause 21.1) Control and are not reasonably foreseeable and cannot reasonably be avoided or overcome by the Affected Party: (i) acts of God, floods and natural disasters; (ii) trade sanctions; (iii) acts of terrorism; (iv) general strikes, lock-outs and labour disputes (excluding a strike, lock-out, labour dispute or industrial action by the employees of Supplier or a subcontractor of Supplier); and (v) civil commotion, riots and acts of war;

**Group** means the relevant Party and its Affiliates;

**Holding Company** means a company which Controls another company;

**Insolvency Event** means a Party: (i) ceasing or threatening to cease to trade (either in whole, or as to any part or division involved in the performance of the Purchase Order); (ii) becoming or being deemed insolvent; (iii) being unable to pay its debts as they fall due; (iv) having a receiver, administrative receiver, administrator or manager appointed over the whole or any part of it or its assets or business; (v) making any composition or arrangement with its creditors or having an order or resolution made for its dissolution or liquidation

(other than for the purpose of solvent amalgamation or reconstruction); or (vi) taking or suffering any similar or analogous procedure, action or event in consequence of debt in any jurisdiction;

**Intellectual Property Rights** means any rights, title, and interest in patents (including any applications for, or pending, patents), trademarks, service marks, trade and business names, rights in the design, utility models, copyright, database rights, trade secrets (as defined in accordance with EU Directive 2016/943 and including know-how) and any other similar right, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Losses** means all losses, liabilities, fines, charges, damages, actions, costs, fees and expenses, and interest and penalties;

**Party** means Supplier or Customer;

**Prices** means the prices for the Products and/or Services set out in the relevant Purchase Order;

**Products** means the products set out in the relevant Purchase Order;

**Product Specification** means the descriptions, functionality and technical requirements and specifications provided from time to time by Customer;

**Provider** means a Party who discloses or makes available Confidential Information to Recipient;

**Purchase Order** means an order for the Products and/or Services submitted by Customer to Supplier;

**Recipient** means a Party who receives or obtains Confidential Information;

**Representatives** means, in respect of a Party, an Affiliate and any officer, director, employee, consultant, agent or sub-contractor or any other party acting on behalf of such Party or its Affiliate;

**Services** means the services, including the provision of the Deliverables, supplied by Supplier to Customer as set out in the Purchase Order, including the Services Specification;

**Services Specification** means the description or specification for the Services provided in writing by Supplier to Customer and approved by Customer including in the Purchase Order;

**Supplier** means the person or entity/organization from whom Customer purchases the Products and/or Services;

**Subsidiary** means a company in respect of which another company has Control;

**Supplier Code of Conduct** means the Supplier Code of Conduct in force, available at

<https://pandoragroup.com/sustainability/resources/policies>

**Third Party Material** means any work or materials authored, created or performed by a third party and in which a third party holds the Intellectual Property Rights, or other rights, either commissioned for, or used in relation to, the Services.

**Warranty Period** means: (a) in respect of Products or replacement Products, 30 (thirty) months from the time of delivery or 24 (twenty four) months from the date that they were first taken into use, whichever is shorter; or (b) in respect of repaired Products, 24 (twenty four) months from the limitation; and (c) general words will not be given a restrictive meaning because they are preceded or followed by words indicating a particular class of acts, matters or things.

## 2. PURPOSE AND SCOPE

2.1 These Conditions shall apply only in the absence of any other applicable written agreement signed by the Customer.

2.2 These Conditions apply to the Purchase Order to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 Supplier waives any right to rely on any term delivered with or contained in any documents of Supplier.

2.4 Supplier shall be deemed to have accepted these Conditions by accepting a Purchase Order or by delivering any goods or performing any Services, in whole or in part.

2.5 These Conditions apply to the supply of both Products and Services unless otherwise specified.

2.6 Supplier is not an exclusive supplier of the Products or Services, and Customer has no obligation to purchase any Products or Services from Supplier.

## 3. SUPPLY

3.1 Supplier shall supply, in accordance with the Purchase Order, such Products and/or Services as Customer may order.

3.2 Supplier warrants that it has, and shall maintain in force, all licenses, permissions, authorizations, consents and permits needed to manufacture and supply the Products and Services in accordance with the Purchase Order.

#### **4. FORECASTS AND STOCKHOLDING**

- 4.1 Forecasts given by Customer do not constitute Purchase Orders, are indicative only and are not binding.
- 4.2 Supplier shall at all times maintain sufficient manufacturing capacity, stocks of raw materials and packaging, and stocks of Products (and in any event a minimum of 2 (two) weeks supply) in order to meet Customer's forecasted requirements for the Products.

#### **5. ORDERS**

- 5.1 Supplier shall send to Customer a specific order confirmation for each Purchase Order confirming Supplier's receipt and acceptance of the same without amendment, no later than 3 (three) business days after Supplier receives a Purchase Order and in any event before shipment of the ordered Products or commencement of performance of the ordered Services (Order Confirmation). Customer may issue Purchase Orders, and Supplier shall send the Order Confirmation, in writing or electronically via a system approved by Customer. If the Purchase Order is not acknowledged by Supplier within three (3) business days of receipt, it will be deemed that the Purchase Order has been accepted by Supplier.
- 5.2 A Purchase Order is not binding on Customer until Customer receives an Order Confirmation. Customer may cancel or amend a Purchase Order prior to receiving the relevant Order Confirmation without incurring any liability to Supplier. Customer may amend a confirmed Purchase Order if Supplier agrees; in such case, the Parties shall send an amended Purchase Order and Order Confirmation, respectively.

#### **6. PRODUCT QUALITY**

- 6.1 Supplier shall ensure that the Products: (i) conform to the Product Specification; (ii) are of satisfactory quality and fit for any purpose held out by Supplier or set out in the Product Specification (and/or any material safety data sheet, if applicable); (iii) are, on delivery and during the Warranty Period, free from defects in design, material and workmanship; and (iv) comply with all applicable laws relating to the Products. Supplier shall comply with the relevant Pandora Requirements for Suppliers, available at <https://pandoragroup.com/sustainability/resources/policies> and which Supplier hereby confirms it has read and accepts.

#### **7. PRODUCTION**

- 7.1 Supplier shall manufacture the Products at, and supply them from, Supplier plants that have been and remain approved by Customer in writing for the purpose of supplying the Products.
- 7.2 Customer may, upon giving reasonable prior notice, inspect and test: (i) the Products at any time before their delivery; and (ii) the production and the quality assurance systems of Supplier and any sub-supplier. Supplier shall remain fully responsible for the Products despite any such inspection or testing and any such inspection or testing will not reduce or otherwise affect Supplier's obligations or Customer's rights under the Purchase Order.
- 7.3 If following any inspection or testing Customer considers that the Products do not, or are unlikely to, comply with Supplier's quality obligations in Clause 6.1 Customer shall inform the Supplier and Supplier shall promptly take such remedial action as is reasonably necessary to ensure compliance. Customer may conduct further inspections and tests after Supplier has carried out its remedial actions.
- 7.4 Supplier shall provide samples of the Products for testing if reasonably required by Customer.

#### **8. DELIVERY**

- 8.1 Supplier shall deliver the products DDP (unless otherwise specified by Customer in writing) to the address and at the time stated in the relevant Purchase Order.
- 8.2 Supplier shall inform Customer promptly upon shipment of the Products.
- 8.3 Supplier acknowledges the critical importance of timely deliveries to effective and efficient production and logistics within Customer's Group. Supplier shall deliver the products within 2 (two) days of Supplier's receipt of a request or such other time period as may be specified in the Purchase Order.
- 8.4 Supplier shall use secure export packaging appropriate for the protection of the products during delivery and bear all handling and other transport costs associated with each delivery.
- 8.5 Delivery of the Products will not be deemed to have taken place until Customer has received the complete volume of the Products (without defects) at the specified place of delivery.
- 8.6 Unless otherwise agreed, Supplier shall not deliver the Products: (i) before the agreed delivery time; (ii) outside the opening hours of Customer as notified to supplier; or (iii) successively. Customer may reject any such attempted delivery without incurring any liability.

- 8.7 If a delivery or part of a delivery is delayed, including as a result of a Force Majeure Event, Supplier shall, as soon as it becomes aware of such delay, promptly inform Customer in writing, stating the reason for and expected duration of the delay, and the revised delivery date (delay notice).

- 8.8 On receipt of a delay notice, or if a delivery or part of a delivery is delayed, Supplier shall automatically be deemed to be in default with such delivery, without further notice by Customer.

- 8.9 On receipt of a delay notice, or if there is any un-notified delay in delivery: (i) Supplier shall obtain the Products from another plant of supplier or via a third party supplier approved in writing by Customer (such approval not to be unreasonably withheld), in either case without any increase in the Price or any delay in the original delivery date. If Supplier is not able to or does not promptly confirm timely supply from another plant or a third party supplier, Customer may, without any liability, cancel the relevant Purchase Order in whole or in part and purchase relevant quantities of the Products from a third party supplier on commercially reasonable terms for as long as the delay continues. Unless the delay is due to a Force Majeure Event, Supplier shall reimburse Customer, on first demand, for any extra cost reasonably incurred by Customer as a result. For the avoidance of doubt, the quantities purchased by Customer from a third party supplier under this clause 8.9 will count towards any volume rebate under the Purchase Order; or (ii) Customer may reject any attempted delayed delivery of the Products and Supplier shall promptly reimburse any monies paid by Customer in relation to such delivery on demand.

#### **9. TITLE AND RISK**

- 9.1 Title to and risk in the products will pass from Supplier to Customer upon delivery of the Products in accordance with clause 8.5.
- 9.2 Supplier shall deliver the Products free from any third party rights and title reservations, and with full title guarantee.
- 9.3 Title to any deliverable shall pass to Customer on creation of that deliverable. Risk of loss of or damage to any deliverable shall pass on its delivery to Customer. Supplier shall be responsible for safe keeping and maintenance of any Deliverables while in Supplier's possession.

#### **10. ACCEPTANCE AND DEFECTS**

- 10.1 Supplier acknowledges and agrees that Customer is relying on Supplier's quality assurance systems and that, therefore, Customer is not obliged to inspect or take samples of the Products on or after delivery, except that Customer shall carry out a routine check of the outermost packaging of the Products delivered to it for readily apparent defects or shortages.
- 10.2 Supplier shall promptly inform Customer in writing about any actual or anticipated Defects affecting the Products at any time. Further, Supplier shall not knowingly deliver Defective Products without Customer's prior written approval. Any such approval will not be construed as an acceptance of the defect.
- 10.3 If any Products are or become Defective Products, Customer shall give written notice to Supplier as soon as reasonably practicable after the defect has been discovered and reasonably investigated by Customer and: (i) Customer may reject those Products and: (a) require Supplier to repair or replace the Defective Products, at Supplier's risk and expense, within 48 (forty eight) hours of being requested to do so; or (ii) return the Defective Products to Supplier or destroy them, at Supplier's risk and expense, and require Supplier to repay the Price of the rejected Products full (whether or not Customer has previously required Supplier to repair or replace the rejected Products); or (c) obtain substitute Products from a third party supplier on commercially reasonable terms, or have the Defective Products repaired by a third party, and Supplier shall reimburse Customer for the reasonable costs it incurs in doing so; and (d) in each case, claim damages for any other Losses resulting from Supplier's delivery of Defective Products; or (ii) accept the Products subject to a proportional reduction in the Price to reflect the reduction in value caused by the defect.
- 10.4 If, in accordance with clause 10.3, Supplier replaces or repairs a Defective Product, a new Warranty Period will apply.
- 10.5 If a defect causes a delay in delivery of any products, or there is a delay due to potentially Defective Products being repaired, all Customer's rights and remedies in clause 8 will apply.
- 10.6 For the avoidance of doubt, Customer may raise claims related to Defects at any time, without regard to any statutory examination or notification requirements.

#### **11. SUPPLY OF SERVICES**

- 11.1 Supplier shall provide the Services to Customer from the date set in the Purchase Order or otherwise specified by Customer, and for the

duration of the Purchase Order, in accordance with the Terms and Conditions of the Purchase Order.

- 11.2 Supplier warrants that it has and will maintain in force for the duration of the Purchase Order, all licenses, permissions, authorizations, consents and permits needed to supply the Services in accordance with the Purchase Order.
- 11.3 Supplier shall meet any milestones and other performance/delivery dates for the performance of the Services specified in the Service Specification, Purchase Order or otherwise notified to Supplier by Customer in writing (where no specific time frame for performance of the Services is specified or agreed, Supplier shall perform its obligations within a reasonable period of time).
- 11.4 In providing the services, Supplier shall: (i) in all matters relating to the Services, reasonably cooperate with, comply with all reasonable instructions of, and attend (and procure that any sub-contractors attend) any relevant induction or other training programs required by, Customer; (ii) perform the Services with reasonable care, skill and diligence in accordance with good practice in Supplier's industry, profession or trade; (iii) assign to the performance of the Services personnel (and sub-contractors) who are suitably skilled, experienced, qualified and trained to carry out the Services and in sufficient number to ensure that Supplier's obligations are fulfilled in accordance with the Purchase Order; (iv) ensure that the Services and Deliverables conform with the Services Specification and all applicable laws, and that the Deliverables are fit for any purpose held out by Supplier or expressly set out in the Services Specification; (v) ensure that the Deliverables are free from Defects in workmanship, installation and design; (vi) ensure that any equipment, goods and materials used by Supplier in the performance of the Services will be properly serviced and maintained by Supplier and at all times kept in a condition so as to enable Supplier to fully comply with its obligations under the Purchase Order; if Supplier breaches any such requirements, it will be deemed to be a material breach and Customer may terminate the Purchase Order pursuant to clause 19.1; (vii) co-operate with any Representatives of Customer in defining and implementing safe ways of working and Control (including relating to food safety, quality and hygiene) and shall follow all relevant instructions from time to time in connection with the same; (viii) hold Customer Materials in safe custody at its own risk, maintain them in good condition until returned to Customer, and not dispose of or use them other than in accordance with Customer's written instructions or authorization; (ix) where it provides any advice to Customer, use all reasonable skill and care including making all reasonable enquiries prior to making any recommendations and give its advice impartially, independently and in the best interests of Customer; (x) co-operate with such third parties as Customer may from time to time nominate for the purposes of performing the Services, and shall work with Customer's nominated Suppliers efficiently and in good faith, and in accordance with any specific guidelines issued by Customer from time to time; and (xi) not do or omit to do anything which may cause Customer to lose any license, authority, consent or permission on which it relies for the purposes of conducting its business or which adversely affects Customer or its Group's reputation.
- 11.5 Following the performance of the Services and delivery of any Deliverables, Customer will have a reasonable time to test and review them before accepting (or rejecting) them, including against any acceptance criteria set out in the Services Specification.
- 11.6 If Supplier, in Customer's reasonable opinion, cannot or will not provide a service or deliverable in accordance with the Purchase Order, and provided that Supplier has been given an opportunity of not less than 14 (fourteen) days to correct the non-compliance, Customer may exercise one or more of the following rights: (i) refuse to accept any subsequent performance of the Services which Supplier attempts to make; (ii) recover from Supplier any costs reasonably incurred by Customer in obtaining substitute services from a third party; (iii) where Customer has paid in advance for Services that have not been provided by the Supplier, have such sums refunded by Supplier on demand; and (iv) terminate the Purchase Order with immediate effect by giving written notice, and without liability, to supplier.
- 11.7 These Conditions will extend to any substituted or remedial Services provided by Supplier.

## **12. PRICE**

- 12.1 Subject to Clause 12.2, Customer shall not be obliged to pay any costs or charges in excess of the Prices for the Products and/or Services.
- 12.2 The Prices are (unless otherwise stated) exclusive of any indirect taxes in the home country of Customer e.g., sales taxes, turnover taxes, duties or similar transactional expenses and value added tax (VAT) but inclusive of all other taxes including government levies,

duties, surcharges, personal taxes, corporate income taxes and withholding taxes. Customer shall, on receipt of a valid VAT invoice from Supplier, pay to Supplier such additional amounts as are due in respect of VAT.

- 12.3 If vat is found to have been charged in error, Supplier shall promptly issue a valid vat credit note or amended VAT invoice, correcting the VAT amount.
- 12.4 Where the Price is agreed to be on a time and materials basis, it will be based on the time actually and properly spent in providing the services and Supplier shall invoice Customer monthly in arrears for its charges, costs and expenses for the month concerned. All costs and expenses must be approved in writing in advance by Customer and all receipts for the same sent with the relevant invoice. Customer shall not reimburse any costs or expenses that Supplier cannot evidence with a valid receipt. Supplier's invoice must be itemized with details of each task, the charges and how they are calculated.

## **13. PAYMENT**

- 13.1 Supplier shall submit invoices in accordance with Customer's written instructions and in any event not prior to, but within 90 (ninety) days of, the date of delivery of the relevant Products or performance of the relevant Services.
- 13.2 Customer shall pay each invoice issued by Supplier within the current month plus 95 days calculated from the date of receipt of or within such other period as may be expressly stated in the relevant Purchase Order. For the avoidance of doubt, Customer is not obliged to pay invoices that: (i) do not comply with clause 13.1; (ii) are not in the correct format; (iii) for incomplete or delayed deliveries of Products or Services; or (iv) for Products or Services that do not otherwise comply with the Purchase Order.
- 13.3 Customer is not obliged to pay any sum (or interest on such sum) that it disputes in good faith until such sum has been agreed in writing or determined to be properly due to Supplier. Customer shall pay any undisputed element of the relevant invoice and notify Supplier of its reasons for disputing the amount.
- 13.4 Payment due date will be calculated from the date of invoice. Payment runs are weekly. Upon approval, and once the payment is due, the invoice will go into the next payment run. If the due date falls after the payment run cut-off, payment will be issued in the following weekly run. Payment shall be made in the country in which supplier is registered, to a bank account in the name of Supplier, in the currency stated on a Purchase Order.
- 13.5 Supplier invoices must comply with statutory requirements and include: supplier name and address, banking information, VAT registration number (if applicable), relevant Customer company name and address, reference person, unique invoice number, issue and due dates, Purchase Order number, Supplier email, pre/post VAT invoice value, VAT amount and rate, currency, and goods or services details (description, quantities, unit amount, tariff code, place of production, FSC, and delivery or service address). Invoices must include agreed payment terms and Purchase Order number to avoid delays. Invoices must be sent on the date of issue as a separate PDF file to Customer's provided email address. Only one invoice per Purchase Order is allowed. Electronic invoices must be submitted through Pagero network or another Provider interoperating with Pagero. PDF, Word, and Excel attachments are not considered electronic invoices. Any invoice queries must be directed to the local office email provided by Customer.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 Supplier warrants and undertakes that, to the best of its knowledge (having undertaken reasonable enquiries), the supply and use of the Products and Services does not and will not infringe any Intellectual Property Rights of any third party.
- 14.2 Supplier grants Customer a perpetual, terminable, worldwide, royalty free license to freely use all Intellectual Property Rights in the Products it purchases and to transfer and sub-license such rights to other companies within Customer's Group.
- 14.3 If the Parties agree any bespoke customization of any of the products specifically for Customer (Customization) and/or Customer bears the cost of preparation of moulds or originating materials relating to the production of any of the Products (mould): (i) any Intellectual Property Rights that arise from, or are created in connection with, the Customization shall automatically vest in Customer, and Supplier hereby transfers and assigns such rights to Customer (or to another member of Customer's Group, as directed by Customer) free of charge; (ii) Supplier shall only use the mould, and any information and materials relating to the Customization, to manufacture the Products as instructed by Customer; (iii) on expiry or termination of the Purchase Order for whatever reason, Supplier shall, at the request of Customer (and upon Customer's payment of any remaining costs for the mould or Customization), either: (a)

forward the mould, and all information and materials relating to the Customization, to Customer (or to a third party, as directed by Customer); or (b) destroy the mould, and all information and materials relating to the Customization, and on request provide evidence of such destruction to Customer.

- 14.4 If any methods of production of Products are subject to any Intellectual Property Rights (excluding any Intellectual Property Rights that automatically vest in Customer pursuant to clause 14.3), then: (i) if Supplier fails to supply or stops production of such Product or the Purchase Order terminates due to circumstances not attributable to Customer, then Supplier hereby grants to Customer (or its designated nominee) a perpetual, world-wide, non-terminable, royalty-free, non-exclusive license to use or sub-license the use of those Intellectual Property Rights in connection with the production of Products the same as or similar to the Products; or (ii) on expiry of the Purchase Order, Supplier and Customer shall, in good faith, negotiate a licensing arrangement allowing Customer to use or sub-license the use of the Intellectual Property Rights in connection with the production of Products the same as or similar to the Products.
- 14.5 Supplier shall keep an updated database of artwork for the Products and Services. Further, Supplier shall use any database of artwork that Customer or another member of Customer's Group makes available, including uploading artwork with Intellectual Property Rights belonging to Customer's Group.
- 14.6 Supplier hereby irrevocably and unconditionally assigns to Customer, with full title guarantee and free from all third party rights, all right, title and interest in and to all existing and future Intellectual Property Rights subsisting in or relating to the results of the Services (including any Deliverables) save that a Party's Background IPR shall remain vested in that Party (or its third party licensors). For the avoidance of doubt, the assignment under this clause shall take effect from the date on which the relevant result was or is created, developed, or produced.
- 14.7 Supplier hereby grants Customer a perpetual, non-terminable, worldwide, non-exclusive, royalty free license to use its Background IPR contained in the Services (and any Deliverables) purchased by Customer. Supplier shall only use Customer's Background IPR to perform its obligations under the Purchase Order and/or as expressly instructed in writing by Customer. On expiry or termination of the Purchase Order for whatever reason, Supplier shall, at the written request of Customer: (i) return Customer's Background IPR to Customer (or to a third party, as directed by Customer); or (ii) if specifically identified in writing by Customer, destroy such identified Customer Background IPR and on request provide evidence of such destruction to Customer.
- 14.8 Supplier shall not incorporate any Third Party Materials whatsoever, including any software, into any Deliverables without the prior written approval of Customer.
- 14.9 Supplier shall obtain waivers of any moral rights in the results of the Services (including any Deliverables) to which any individual is now or may be at any future time entitled under any applicable law in any jurisdiction.
- 14.10 At its own expense, Supplier shall, and shall use all reasonable endeavors to procure that any third party and/or Supplier employees shall, promptly execute and deliver such documents and perform such acts as may be reasonably required for the purpose of giving full effect to this clause 14, including: (i) securing for Customer all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Customer in accordance with Clauses 14.3 and 14.6; (ii) confirming or registering Customer as the proprietor of the assigned Intellectual Property Rights; (iii) assisting Customer in obtaining, defending and enforcing the assigned Intellectual Property Rights; and (iv) assisting with any other proceedings that may be brought by or against Customer, against or by any third party relating to, the assigned Intellectual Property Rights.

## **15. LIABILITY AND LIMITATION**

- 15.1 Each Party is responsible for all acts or omissions of its Representatives in connection with the Purchase Order.
- 15.2 Nothing in the Purchase Order shall exclude or limit either Party's liability for: (i) fraud, willful, default, gross negligence, death or personal injury caused by its negligence; (ii) any breach of any terms or implied obligations as to title; or (iii) any liability which cannot be excluded or limited by law.
- 15.3 Supplier shall be liable for all direct loss or damage incurred or suffered by customer or any other company in its group as a result of a breach by Supplier of the Purchase Order. Customer may recover any loss suffered by any member of Customer's group as a result of any breach of the Purchase Order by Supplier as if such loss had been suffered by Customer.

15.4 Subject to clauses 15.2, 15.5 and 15.6, neither Party will have any liability whether in Purchase Order, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss or damage howsoever caused and whether such loss or damage was foreseeable or in the contemplation of the parties.

15.5 Notwithstanding clause 15.4, the parties have agreed that Customer shall in any event be entitled to recover from Supplier all Losses resulting from a product recall to the extent that it arises in connection with the supply by Supplier of Defective Products, or of Services or Deliverables that do not comply with the requirements set out in the Purchase Order (all of which will be deemed direct Losses): (i) the value of the liquid and the packaging which shall be equal to the sales price refunded by Customer to its Customers (for finished Products) or equal to Customer's cost of goods sold (for semi-finished Products and finished Products not yet sold); (ii) the cost of transportation of the Products back to a company in Customer's Group and/or to the location where the Products will be scrapped; (iii) the cost of storing and scrapping the liquid and packaging; (iv) applicable alcohol taxes that could not be re-claimed from the authorities; (v) fines and fees; (vi) the cost of providing information to the public about the recall; and (vii) reasonable legal costs and similar.

15.6 Notwithstanding clause 15.4, Supplier shall indemnify Customer and its Group against all Losses suffered or incurred by them arising out of or in connection with any (actual or threatened) claim made against them by a third party for: (i) actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Products, Services or Deliverables, save to the extent that such claim relates to Customer's Background IPR provided for use in connection with the Services; and (ii) death, personal injury or damage to property arising from the supply by Supplier of Defective Products, or of Services or Deliverables that do not comply with the requirements set out in the Purchase Order.

15.7 Notwithstanding clause 15.4, each Party shall indemnify the other and its Group against all Losses suffered or incurred by them arising out of or in connection with any breach by that Party of Clause 24.

## **16. INSURANCE**

- 16.1 Supplier shall, during its performance of the Purchase Order and for a period of 3 (three) years afterwards, maintain in force with reputable insurance companies (with a financial rating of at least Standard & Poor's BBB or an equivalent) adequate worldwide insurance to cover Supplier's potential liability under the Purchase Order.
- 16.2 Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to Supplier's obligations under the Purchase Order.

## **17. CONFIDENTIALITY**

17.1 Recipient undertakes at all times (during and after the performance of the Purchase Order): (i) to keep secret and confidential the Confidential Information and not to, directly or indirectly, use, copy or disclose, or authorize or permit the use, copying or disclosure of the same or any part thereof except in connection with this clause 17; and (ii) to use the Confidential Information solely in connection with, and to the extent necessary for, the fulfilment of its obligations under, or receipt of the benefit of, the Purchase Order and not to use or exploit the Confidential Information in any other way whatsoever.

17.2 Recipient may disclose the Confidential Information: (i) only to those of its Representatives that need to know it for the proper fulfilment of its obligations under, or receipt of the benefit of, the Purchase Order, provided always Recipient ensures its Representatives are bound by confidentiality obligations equivalent to those set out in these Conditions; and (ii) to the minimum extent required by the laws or regulations of any country with jurisdiction over Recipient, an order of any court or ruling body of competent jurisdiction, or the rules of any applicable stock exchange. In such circumstances, Recipient shall, as soon as possible and to the extent legally permitted, furnish Provider with full details of the disclosure that will be or has been made and cooperate with any reasonable attempt by Provider to oppose or restrict the disclosure.

17.3 Recipient shall, immediately upon becoming aware of the same, give notice to Provider of any unauthorized disclosure, misuse, theft or other loss of Provider's Confidential Information, whether inadvertent or otherwise.

17.4 The confidentiality obligations in these Conditions shall not apply to any Confidential Information that Recipient can demonstrate, to the reasonable satisfaction of Provider, is: (i) in the public domain other than as a result of a breach of the Purchase Order by Recipient or its

Representatives; (ii) lawfully in Recipient's possession and was made available to Recipient by an independent third party who was not bound by an obligation of confidentiality to Provider in relation to that information; (iii) already known to Recipient prior to receiving it pursuant to the Purchase Order, as evidenced by Recipient's prior written records; or (iv) subsequently developed by or for Recipient independently of the Confidential Information received pursuant to the Purchase Order.

- 17.5 Upon request from Provider, or upon expiry or termination of the Purchase Order, Recipient shall destroy and erase, to the extent reasonably possible, from its and its Representatives' computers and devices, all Confidential Information (including all documents containing, reflecting or generated from any Confidential Information) then in its possession or Control. Recipient may retain one copy of Provider's Confidential Information only to the extent necessary to comply with Applicable Laws, for its internal record keeping purposes or to enforce its rights under the Purchase Order. These Conditions will continue to apply to any documents and materials retained by Recipient pursuant to this Clause.
- 17.6 Supplier undertakes (except as may be required by law) not to disclose that Customer, or any member of its Group, is a Customer or client of Supplier or use Customer's name or brand, or any part thereof, in any promotion, marketing, announcement or otherwise, without Customer's prior written consent.

## **18. RECORDS AND AUDITS**

- 18.1 Supplier shall maintain during its performance of the Purchase Order and for a reasonable period thereafter full and accurate books and records relating to its performance of the Purchase Order and all sums paid or payable under it.
- 18.2 At the reasonable request of Customer, Supplier shall allow Customer or its Representative (auditing party) access to its premises upon reasonable prior notice to enable the auditing party to: (i) audit the books and records referred to in clause 18.1 and take copies; (ii) review the processes, procedures or Control mechanisms which underlie or are involved with Supplier's performance of its obligations under the Purchase Order; and (iii) audit Supplier's compliance with the Supplier Code of Conduct. Any third party Representative conducting an audit will be obliged to sign an appropriate non-disclosure agreement both with Supplier and Customer.
- 18.3 Supplier shall give the auditing party access to all relevant records and materials, and such other assistance, as may be reasonably requested by the auditing party for the purposes of carrying out an audit (subject to Supplier's right to redact such records and materials as reasonably necessary to protect the confidentiality of any information that is not related to the Purchase Order).
- 18.4 Any audit by or on behalf of Customer will be undertaken at its cost save where such audit reveals a material discrepancy or material non-compliance in which case Supplier shall cover Customer's reasonable costs.
- 18.5 Should any audit reveal that Customer has been overcharged, Supplier shall promptly reimburse Customer for the amount of any overcharge on demand.
- 18.6 Customer reserves the right to request performance data related to the Supplier Code including by performing announced and unannounced audits at Supplier's and its sub-suppliers sites. The audits may be performed by Customer, by Representatives appointed by Customer, and/or Representatives appointed by organizations of which Customer is a member. Audits performed or commissioned by Customers use of the SMETA audit methodology. Additionally, Customer accepts audits or other site performance assessments undertaken by approved auditors against recognized performance standards accepted by Customer. Approved audits and recognized performance standards are listed in the Customer Responsible Sourcing Policy, which can be found here: <https://pandoragroup.com/sustainability/resources/policies>.

## **19. TERMINATION**

- 19.1 A Party may terminate the Purchase Order with immediate effect by giving written notice to the other Party if: (i) the other Party commits a material breach of the Purchase Order which is irremediable or if such breach is remediable fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so; (ii) the other Party is subject to an Insolvency Event; (iii) the terminating Party determines in good faith that the other Party has breached clause 17 or 24; (iv) in accordance with clause 21.3.
- 19.2 Customer may terminate the Purchase Order with immediate effect by giving written notice to Supplier if: (i) there is a Change of Control; or (ii) a plant of the Supplier is rated "not approved" during a quality audit by Customer irrespective of the reason.

## **20. CONSEQUENCES OF TERMINATION**

- 20.1 Termination of the Contract will not affect any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination and which existed at or before the date of termination.
- 20.2 The expiry or termination of the Purchase Order for any reason, will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or to continue in force thereafter.
- 20.3 On expiry or termination of any Purchase Order for the provision of Services for any reason, Supplier shall, in good faith, assist in and enable a smooth hand over of the provision of the Services or services similar to the Services to Customer or any new Supplier as directed by Customer of termination.

## **21. FORCE MAJEURE**

- 21.1 If either Party is prevented, hindered or delayed in or from performing any of its obligations under the Purchase Order by a Force Majeure Event (Affected Party), the Affected Party shall not be liable for any failure or delay in the performance of that obligation. Unless otherwise stated in these Conditions, the time for performance of such obligation will be extended accordingly.
- 21.2 The Affected Party shall use all reasonable endeavors to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of any of its obligations for a continuous period of more than 30 (thirty) days, the other Party may terminate the Purchase Order by giving 30 (thirty) days written notice to the Affected Party.

## **22. ASSIGNMENT**

- 22.1 Except as otherwise set out in these Conditions, neither Party shall assign, novate, sub-license, mortgage or otherwise transfer in whole or in part any of its rights and/or obligations under the Purchase Order without the prior written consent of the other Party.
- 22.2 Customer may assign, novate, sub-license, mortgage or otherwise transfer in whole or in part any of its rights and/or obligations under the Purchase Order to another member of its Group.

## **23. NO SUB-CONTRACTING**

- 23.1 Supplier cannot sub-contract the performance of any of its obligations under the Purchase Order unless explicitly agreed with Customer.
- 23.2 Supplier remains responsible to Customer for the performance and observance of all its obligations under the Purchase Order and for the consequences of any acts or omissions of its sub-contractors arising in connection with the Purchase Order.

## **24. COMPLIANCE**

- 24.1 Each Party warrants and undertakes that, in connection with the Purchase Order, it will comply with all applicable laws. Further, each Party warrants and represents that it has knowledge of laws relating to anti-corruption, competition, data protection, and trade sanctions, and that all applicable measures are in place (e.g. Comprehensive training), to secure that Party's compliance with such laws.
- 24.2 In connection with the Purchase Order, a Party shall not, and shall procure that its Representatives will not give, offer, promise to give or authorize, directly or indirectly, any financial or other advantage to another person in violation of, or that would cause the other Party or its Representatives to be in violation of, any applicable foreign or domestic anti-bribery and corruption laws.
- 24.3 Supplier warrants and represents that it shall promptly respond to any reasonable request of Customer for additional information about Supplier and its business, for example, Customer's third party screening questionnaires, and that its responses to the same, including any warranties given therein, will be complete and accurate.
- 24.4 In connection with the Purchase Order, Supplier shall at all times comply with the Supplier Code of Conduct.
- 24.5 In connection with the Purchase Order, each Party confirms that it has not engaged, nor will it engage, in Price fixing, bid rigging, market sharing, output restriction, illegal price information exchange agreements or other behavior that breaches applicable competition laws.
- 24.6 In connection with the Purchase Order, each Party shall comply with all applicable sanctions, import, re-import, export, and re-export Control laws and regulations. Neither Party will be required to undertake any activity pursuant to the Purchase Order that would violate any Applicable Laws.

## **25. GENERAL**

- 25.1 Survival: the expiry or termination of this Purchase Order for any reason, will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or to continue in force thereafter.
- 25.2 Further assurance: the Parties shall execute and deliver all such further documents, and take all such further actions, as may be reasonably required to give full effect to the matters and transactions contemplated by the Purchase Order.
- 25.3 Waiver: the failure of either Party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to the Purchase Order will not constitute a waiver of such term or right and will in no way affect that Party's right later to enforce or to exercise it. A waiver of any right or remedy under the Purchase Order or by law is only effective if given in writing.
- 25.4 Variations: no alteration to or variation of the Purchase Order will take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorized Representative.
- 25.5 Rights and remedies: each right and remedy of the Parties under the Purchase Order is without prejudice, and in addition to, any rights or remedies under this Purchase Order or at law.
- 25.6 Entire agreement: in case of conflict, these Conditions will prevail any terms contained in a Purchase Order.
- 25.7 Severability: each provision of the Purchase Order is severable and distinct from the others.
- 25.8 Third party rights: except as otherwise set out in the Purchase Order, no rights will be conferred under the Purchase Order on any person other than the parties, and no person other than the parties will have any right to enforce any term of the Purchase Order.
- 25.9 Notices: all notices and other communications required to be given under the Purchase Order must be in writing and may be delivered by email, provided that any notice given pursuant to the termination, variation or waiver clauses of the Purchase Order is only valid if delivered by hand, registered post (or similar) or courier to the intended Recipient's registered office or principal place of business, and delivered FAO: legal dept. Any such notice will be deemed to be received on delivery if delivered by hand or courier, or three days after dispatch if sent by registered post (or similar).

25.10 Data protection: Customer collects and processes contact details, transaction history, payment details, employment information, and other necessary personal data, about Supplier and its personnel, in order to enter into and fulfil Contracts, as well as for legitimate business purposes, including to maintain the business relationship, to facilitate the provision of the agreed Products or Services, to settle payments, to conduct certain checks for anti-fraud or other reasons, for auditing purposes, and for internal evaluation. To fulfill these purposes, Supplier's data may be shared with other Customer Group companies, service Providers, Suppliers or business partners within and outside the EU/EEA. Supplier's data will be treated as confidential, protected by appropriate security measures, and retained only for so long as the law allows, after which time it will be deleted. Customer's privacy policy can be found at <https://www.pandora.net/en-mm/company/terms/privacypolicy>. At any time, Supplier may request further information about the processing of its personal data and ask that it be corrected, deleted or restricted in processing. To do so, please contact [privacy@pandora.net](mailto:privacy@pandora.net). If Supplier has any complaints about Customer's processing of its personal data, Supplier should contact Customer before contacting the data protection authority.

## 26. GOVERNING LAW AND JURISDICTION

- 26.1 The Purchase Order and all non-contractual obligations arising from or connected with the Purchase Order will be governed by and construed in accordance with the law of the country in which Customer is domiciled.
- 26.2 The convention on the international sale of goods does not apply to the contract.
- 26.3 The Parties submit to the exclusive jurisdiction of the courts where Customer is domiciled, to resolve any disputes save that the parties may commence injunctive, declaratory or enforcement proceedings in any court of competent jurisdiction.

