## GENERAL TERMS AND CONDITIONS OF PURCHASE OF PERCY & REED PRODUCT LIMITED ("PERCY & REED")

## 1. **DEFINITIONS**

1.1. In these terms and conditions (these "T&C") the following expressions are defined as follows:

"Affiliate": any subsidiary or holding company of a party, and any subsidiary of a holding

company of it or any entity which controls, is controlled by, or is under common control

with an entity;

"Bespoke Products" Products which are bespoke to Percy & Reed, whether because they incorporate its

formulae, specifications or branding, or for any other reason;

"Business Day": a day other than a Saturday, Sunday or public holiday in England;

"Contract": the contract between Percy & Reed and the Seller for the purchase of Products and/

or Services, comprising the Order, any Engagement Letter and these T&C;

"Deliverables": all tangible and non-tangible items delivered or to be delivered with or as part of the

Services, including designs, drawings, documents, data, software, reports, records

and specifications other than the Products;

"Delivery Address": the delivery address stated in the Contract or, if not so stated, such address as may

be notified to or agreed with the Seller before delivery;

"Engagement Letter": any engagement letter, statement of work, Specification or the like which Percy &

Reed issues relating to the Services;

"Order": Percy & Reed's written order for the purchase of Products and/or Services, as set out

in its purchase order form or in its written acceptance of the Seller's quotation, as the

case may be;

"Policies": Percy & Reed's policies as published or provided to the Seller;

"**Price**": the price for the Products and/or Services;

"Products": any and all products ordered by Percy & Reed from the Seller and shall, except where

the context otherwise requires, include any items or materials provided with them or

with the Services;

"Services": any services to be provided by the Seller as set out in the Order or Contract,

including, where applicable, the production and provision of Deliverables, provided that, unless otherwise specified, services necessary or desirable for the supply of Products, such as manufacturing, packaging, labeling and delivery, are a sub-set of

the supply of Products and do not comprise Services;

"Seller" the person to whom the Order is addressed or from whom Percy & Reed otherwise

purchases Products and/or Services;

"Seller Group": the Seller and its Affiliates:

"Percy & Reed": Percy & Reed Product Limited company number 07458217 whose registered office

address is at 157c Great Portland Street, London, W1W 6QS.; and

Specification: any specification for the Products or Services, that is published or that is agreed in

writing by Percy & Reed and the Seller;

1.2. The following rules of interpretation apply:

- references to the parties are to Percy & Reed and the Seller, including their successors and permitted assigns;
- 2. references to Conditions are to the conditions of these T&C;
- 3. a person includes a natural person, corporate or unincorporated body;
- 4. a reference to a statute is a reference to it as amended or re-enacted and includes all subordinate legislation made under it;
- 5. any words following the terms including or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term following those terms; and
- 6. a reference to writing or written includes email.

# 2. FORMATION OF CONTRACT

- 2.1. The Order constitutes an offer by Percy & Reed to purchase Products and/or Services from the Seller in accordance with these T&C.
- The Order shall be deemed to be accepted on the earlier of:
  - the Seller issuing written acceptance of the Order; or
  - any act by the Seller consistent with fulfilling the Order;
  - 2.2.3. five (5) Business Days from the date of the Order if the Seller has not rejected the Order, at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.3. The Seller shall notify its acceptance or rejection of an Order to Percy & Reed within five (5) Business Days from the date of the Order and shall not unreasonably reject an Order.
- 2.4. These T&C apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. All these T&C shall apply to the supply of both Products and Services except where the application to one or the other is specified.

## 3. SUPPLY OF PRODUCTS

- 3.1. The Seller shall ensure that the Products and any Deliverables shall:
  - 3.1.1.correspond with their description and any applicable Specification;
  - 3.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Seller or made known to the Seller by Percy & Reed, expressly or by implication, and in this respect Percy & Reed relies on the Seller's skill and judgement;
  - 3.1.3. be free from defects in design, materials and workmanship and remain so for 24 months after delivery; and
  - 3.1.4. comply with all applicable statutory and regulatory requirements and best practices relating to their manufacture, labelling, packaging, storage, handling and delivery; and
  - 3.1.5.not involve or result in the infringement of any third party intellectual property or other rights.
- 3.2. The Seller shall maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Products.
- 3.3. Percy & Reed may inspect and test the Products at any time before delivery. The Seller shall remain fully responsible for the Products despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.
- 3.4. If following such inspection or testing Percy & Reed considers that the Products do not comply or are unlikely to comply with these T&C, Percy & Reed shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5. Percy & Reed may conduct further inspections and tests after Seller has carried out its remedial actions, to which the above provisions shall apply.

- 3.6. The Seller shall satisfy itself as to the extent and nature of any Products or Services including any environmental factors which might affect the Services. Any failure by the Seller to do so shall not relieve it from its obligations.
- 3.7. The Seller shall cooperate with and provide information to any personnel employed or engaged by Percy & Reed in connection with the Services.
- 3.8. The Seller shall not supply Bespoke Products to any other person without Percy & Reed's prior written consent.

#### 4. DELIVERY OF PRODUCTS

#### 4.1. The Seller shall ensure that:

- 4.1.1. the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2. each delivery of the Products is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Products (including the code number (where applicable)), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
- 4.1.3. it states clearly on the delivery note any requirement for Percy & Reed to return any packaging material to the Seller. Any such packaging material shall only be returned to the Seller at the cost of the Seller.

#### 4.2. The Seller shall deliver the Products:

- 4.2.1. on the date specified in the Order or, if no such date is specified, then within ten (10) Business Days of the date of the Order:
- 4.2.2. DDP (Incoterms 2020) to the Delivery Address unless otherwise stated on the Order; and
- 4.2.3. during Percy & Reed's normal hours of business, or as instructed by Percy & Reed.

Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Address.

#### 4.3. If the Seller:

- 4.3.1. delivers less than the quantity of Products ordered, Percy & Reed may reject the Products; or
- 4.3.2. delivers more than the quantity of Products ordered, Percy & Reed may at its sole discretion reject the Products or the excess Products, and any rejected Products shall be returnable at the Seller 's risk and expense. If the Seller delivers more or less than the quantity of Products ordered, and Percy & Reed accepts the delivery, the Seller shall make a pro rata adjustment to the invoice for the Products.
- 4.4. The Seller shall not deliver the Products in instalments without Percy & Reed's prior written consent. Where it is agreed that the Products are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle Percy & Reed to the remedies set out in below.
- 4.5. Title and risk in the Products shall pass to Percy & Reed on completion of delivery unless it has paid in advance, in which case title shall pass on payment.

# 5. SUPPLY OF SERVICES

- 5.1. The Seller shall from the Commencement Date and for the duration of the Contract supply the Services to Percy & Reed in accordance with the terms of the Contract.
- 5.2. The Seller shall meet any performance dates for the Services specified in the Order or that Percy & Reed notifies to the Seller and time is of the essence.
- 5.3. In providing the Services, the Seller shall:
  - 5.3.1. co-operate with Percy & Reed in all matters relating to the Services, and comply with all instructions of Percy & Reed;
  - 5.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade:
  - 5.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with the Contract;
  - 5.3.4. ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that Percy & Reed expressly or impliedly makes known to the Seller;
  - 5.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.3.6. use the best quality Products, materials, standards and techniques, and ensure that the Deliverables, and all Products and materials supplied and used in the Services or transferred to Percy & Reed, will be free from defects in workmanship, installation and design:
  - 5.3.7. obtain and at all times maintain all licences and consents which may be required for the provision of the Services:
  - 5.3.8. comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Policies;
  - 5.3.9. observe all health and safety rules and regulations and any other security requirements that apply at any of the premises where Services are performed;
  - 5.3.10. hold all formulae, ingredients, additives, specifications, materials and data supplied by Percy & Reed to the Seller ("Percy & Reed Materials") securely in safe custody at its own risk, maintain Percy & Reed Materials in accordance with the Confidentiality conditions set out below and in secure and good condition, and not disclose, dispose of or use Percy & Reed Materials other than in accordance with Percy & Reed's written instructions or authorisation;
  - 5.3.11. not do or omit to do anything which may cause Percy & Reed to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that Percy & Reed may rely or act on the Services.

## 6. REMEDIES

- 6.1. If the Seller fails to deliver the Products by the applicable date or to perform the Services by the applicable date, or both, Percy & Reed shall, without affecting other rights or remedies available to it, have the following rights:
  - 6.1.1. to terminate the Contract with immediate effect by giving written notice to the Seller;
  - 6.1.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Products which the Seller attempts to make;

- 6.1.3. to recover from the Seller any costs incurred by the Percy & Reed in obtaining substitute Products and/or services from a third party;
- 6.1.4. to require a refund from the Seller of sums paid in advance for Services that the Seller has not provided and/or Products that it has not delivered; and/or
- 6.1.5. to claim damages for any additional costs, loss or expenses incurred by Percy & Reed which are in any way attributable to the Seller's failure to meet such dates.
- 6.2. If the Products are not delivered or the Services not performed by the applicable date, Percy & Reed may elect to claim or deduct one and one half percent (1.5)% of the Price for each week's delay by way of liquidated damages, up to a maximum of fifteen (15)% of the total Price.
- 6.3. If the Seller has delivered Products that do not comply with Condition 3, then, without limiting or affecting other rights or remedies available to it, Percy & Reed may, whether or not it has accepted the Products:
  - 6.3.1. terminate the Contract with immediate effect by giving written notice to the Seller;
  - 6.3.2. reject the Products (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's risk and expense;
  - 6.3.3. require the Seller to repair or replace the rejected Products, or to provide a full refund of the price of the rejected Products (if paid);
  - 6.3.4. refuse to accept any subsequent delivery of the Products which the Seller attempts to make;
  - 6.3.5. recover from the Seller any expenditure incurred by Percy & Reed in obtaining substitute products from a third party; and/or
  - 6.3.6. claim damages for any additional costs, loss or expenses incurred arising from the Seller's failure to supply Products in accordance with Condition 3.
- 6.4. If the Seller has supplied Services that do not comply with the requirements of Condition 5, then, without limiting or affecting other rights or remedies, Percy & Reed may:
  - 6.4.1. terminate the Contract with immediate effect by giving written notice to the Seller;
  - 6.4.2. return the Deliverables to the Seller at the Seller 's risk and expense;
  - 6.4.3. require the Seller to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
  - 6.4.4. refuse to accept any subsequent performance of the Services which the Seller attempts to make;
  - 6.4.5. recover from the Seller any expenditure incurred by Percy & Reed in obtaining substitute services or deliverables from a third party; and/or
  - 6.4.6. claim damages for any additional costs, loss or expenses incurred arising from the Seller's failure to comply with Condition 5.
- 6.5. These T&C shall extend to any substituted or remedial Services and/or repaired or replacement Products supplied by the Seller (mutatis mutandis).
- 6.6. Percy & Reed's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

# 7. SELLER'S PERSONNEL

- 7.1. The Seller shall ensure that all personnel performing Services shall be qualified, skilled and experienced in accordance with good industry practice for the Services they are required to perform.
- 7.2. Percy & Reed may instruct the Seller to remove from the Services or any site any person who in the opinion of Percy & Reed, acting reasonably, is unsuitable for any reason. The Seller shall provide a suitable replacement for any personnel within twenty-four (24) hours.

#### 8. CHARGES AND PAYMENT

#### 8.1. The Price:

- 8.1.1. shall be the price set out in the Order, or if no price is quoted, the price set out in the Seller's published price list in force at the Commencement Date;
- 8.1.2. shall be inclusive of the costs of packaging, insurance and carriage of the Products. No extra charges shall be effective unless agreed in writing and signed by Percy & Reed;
- 8.1.3. of the Services shall be the full and exclusive remuneration of the Seller in respect of the performance of the Services. Unless otherwise agreed in writing by Percy & Reed, the charges shall include every cost and expense of the Seller directly or indirectly incurred in connection with the performance of the Services
- 8.2. In respect of the Products, the Seller shall invoice Percy & Reed on or at any time after completion of delivery. In respect of Services, the Seller shall invoice Percy & Reed on completion of the Services. Each invoice shall include such supporting information required by Percy & Reed to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.3. In consideration of the supply of Products and/or Services by the Seller, Percy & Reed shall pay the invoiced amounts within sixty (60) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Seller.
- 8.4. The Price is state inclusive of all tax and duty except, where clearly so stated, VAT. Where any taxable supply for VAT purposes is made under the Contract by the Seller to Percy & Reed, Percy & Reed shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such amounts in respect of VAT as are chargeable on the supply of the Products and/or Services at the same time as payment is due for the supply of the Products and/or Services.
- 8.5. If Percy & Reed fails to make a payment due to the Seller under the Contract by the due date, then Percy & Reed shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.6 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at no lower than 3% a year.
- 8.6. The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow Percy & Reed to inspect such records at all reasonable times on request.
- 8.7. Percy & Reed may at any time, without notice to the Seller, set off any liability of the Seller to Percy & Reed against any liability of Percy & Reed to the Seller, whether present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 8.8. The Seller shall not be entitled to assert any credit, set-off or counterclaim against Percy & Reed in order to justify withholding payment of any such amount in whole or in part. Percy & Reed may, without limiting its other rights or remedies, set off any amount owing to it by the Seller against any amount payable by Percy & Reed to the Seller.

## 9. IPR

- 9.1. All Intellectual Property Rights in or arising out of or in connection with the Products, Services or Deliverables (other than Intellectual Property Rights in any Percy & Reed Materials) shall be owned by the Seller, except where they are Bespoke Products or have otherwise been produced or delivered to the specific design of or for the exclusive use of Percy & Reed. Where that exception applies, the Seller assigns to Percy & Reed, with full title guarantee, all applicable Intellectual Property Rights. In the case of Bespoke Products which include the background intellectual property of the Seller and intellectual property or other proprietary rights of Percy & Reed, each party shall remain the owner of its own rights and, save with regard to ownership of its background rights by the Seller, Percy & Reed shall own all other rights in the Bespoke Products which the Seller shall supply only to Percy & Reed.
- 9.2. The Seller grants to the Percy & Reed a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy, re-sell and modify the Products and Deliverables, which licence shall be exclusive in relation to Bespoke Products.
- 9.3. The trade mark PERCY & REED and any other trade mark used by Percy & Reed ("P&R TM") is the exclusive property of Percy & Reed. Where so indicated in the Specification, the Seller shall incorporate the applicable P&R TM into the Products (including packaging where applicable) as directed by Percy & Reed. The Seller shall not use any P&R TM for any other purpose without Percy & Reed's prior written consent.
- 9.4. All Percy & Reed Materials are the exclusive property of the Percy & Reed.
- 9.5. The Seller shall, promptly do all such further acts and execute all such other documents as required to vest in Percy & Reed the full benefit of rights assigned under this Condition.

#### 10. INDEMNITY

- 10.1. The Seller shall indemnify Percy & Reed on demand against all costs, expenses, damages, liabilities and losses awarded against or incurred or paid by Percy & Reed as a result of or in connection with:
  - 10.1.1.any breach or negligent performance or nonperformance of the Contract;
  - 10.1.2.any claim made against Percy & Reed for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Products, or receipt, use or supply of the Services (excluding the Percy & Reed Materials);
  - 10.1.3.any claim made against Percy & Reed by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Products, as delivered, or the Deliverables; and
  - 10.1.4.any claim made against Percy & Reed by a third party arising out of or in connection with the supply of the Products, as delivered, or the Services.
- 10.2. This Condition shall survive termination of the Agreement.

## 11. INSURANCE

11.1. The Seller shall maintain during the term of the Contract and for six years thereafter, with a reputable insurance company, professional indemnity insurance, errors and omissions insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract.

11.2. The Seller shall, on the Percy & Reed's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### 12. CONFIDENTIALITY

- 12.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the formulae, specifications, ingredients, additives, materials, business, affairs, customers, clients or suppliers of the other party or of any Affiliate.
- 12.2. Each party may disclose the other party's confidential information:
  - 12.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition; and
  - 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### 13. TERMINATION

- 13.1. Without limiting any other right or remedy, Percy & Reed may terminate the Contract:
  - 13.1.1. with immediate effect by giving written notice to the Seller if:
  - 13.1.2. there is a change of control of the Seller; or
  - 13.1.3. the Seller's financial position deteriorates to such an extent that in Percy & Reed's opinion its capability to adequately fulfil its obligations under the Contract has been affected:

for convenience by giving the Seller one months' written notice.

- 13.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 13.2.1. the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
  - 13.2.2. the other party takes any step or action in connection with its entering bankruptcy, administration, liquidation or any composition or arrangement with its creditors, having a receiver appointed or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - 13.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 13.3. In any of the circumstances in which Percy & Reed may terminate the Contract, it may instead elect to terminate part of the Contract only.

## 14. CONSEQUENCES OF TERMINATION

- 14.1. On termination of the Contract, the Seller shall immediately deliver to Percy & Reed all Deliverables whether or not then complete, and return all Percy & Reed Materials. If the Seller fails to do so, then Percy & Reed may enter the Seller's premises and take possession of them. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2. Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- **14.3.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 15. FORCE MAJEURE

**15.1.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving written notice to the affected party.

## 16. POLICIES

The Seller warrants and undertakes that the Seller Group shall comply with all applicable Policies.

# 17. MISCELLANEOUS

- 17.1. The Seller warrants and represents that in relation to any Contract it has not and shall not contravene the Bribery Act 2010.
- 17.2. Any notice given by either party under a Contract shall be in writing addressed to the other party at its registered office, principal place of business or at such other address it has notified to the other party for that purpose. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission. The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.4. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5. The Seller shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. Percy & Reed may perform any of its obligations or exercise any of its rights under the Contract through any Affiliate.

- 17.6. If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.
- 17.7. No one other than a party to the Contract shall have any right to enforce any of its terms.
- 17.8. The Contract is governed by English law and the parties submit to the jurisdiction of the courts of England and Wales.