

Stockist Agreement

Parties

1. **Al.ive Body Pty Ltd ACN 635 011 960** of Level 1, 539 Brighton Road, South Brighton SA 5048 (**al.ive body**)
2. The Applicant specified in the Stockist Application, who is approved by al.ive body as a stockist for the purposes of this agreement (**Stockist**)

Introduction

- A. The Stockist desires to stock the Products.
- B. al.ive body agrees to grant to the Stockist rights to stock the Products in accordance with the terms and conditions of this agreement.

Operative clauses

1. Definitions

In this agreement:

al.ive body's Premises means the premises specified in Item 7 of the Schedule or such other address nominated in writing by al.ive body to the Stockist from time to time;

Australian Stockist means a Stockist carrying on business in Australia, including via a Retail Outlet located in any state and/or territory within Australia or via an Online Store;

Brands means all brand names, trademarks, service marks or other identifying marks or names, whether registered or not, or capable of registration or not, that are used by al.ive body and its related bodies corporate in relation to the Products, including without limitation the brand names specified in Item 3 of the Schedule;

Business Day means any day except a Saturday or a Sunday or public holiday in Adelaide, South Australia;

Claims means any cost or expense (including without limitation, legal costs on a full indemnity basis), demand, legal proceedings, claims, actions, fines, penalties, obligations, damages, loss or liability of any nature (including without limitation indirect and consequential losses);

Cut Off Date means the last day (due date) for the Stockist to place an order for Products during a Period of High Demand as notified in writing by al.ive body from time to time;

Commencement Date means the date specified in Item 4 of the Schedule;

Control means:

- (a) in relation to a body corporate (including without limitation, a body corporate in the capacity as trustee of any trust property), the ability of any person to exercise control

over the body corporate by virtue of the holding of voting shares in that body corporate or by any other means including, without limitation, the ability to directly or indirectly remove or appoint all or a majority of the directors of the body corporate; and

- (b) in relation to an individual, the ability of any person to direct that individual person to act in accordance with the instructions, whether by operation of any law, agreement, arrangement or understanding, custom or any other means;

Credit Account means the Stockist's credit facility with al.ive body (if any);

Credit Application means the application for a Credit Account completed by the Stockist (in the form prescribed by al.ive body from time to time) and provided to al.ive body by the Stockist;

Event of Default means:

- (a) the Stockist fails to pay the Purchase Price or any part of the Purchase Price outstanding and any accrued interest within two (2) Business Days of receiving a written demand from al.ive body;
- (b) the guarantees provided by the directors or proprietors of the Stockist as part of the Credit Application are not binding or any person alleges that the guarantees are not binding;
- (c) the Stockist suffers an Insolvency Event; or
- (d) the Stockist ceases to carry on business;

Expiry Date means the date set out in Item 5 of the Schedule;

Extended Term means the period comprising the extension to the Initial Term, agreed between the parties pursuant to clause 5.2;

GST means a tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges;

GST Amount means the amount of GST payable in respect of a Taxable Supply;

GST Law means the A New Tax System (Goods and Services Tax) Act 1999, or any other act imposing a goods and services tax in Australia;

Initial Term has the meaning given to it in clause 5.1;

Insolvency Event, in relation to a party, means any of the following events:

- (a) that party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to that party or any of its assets;
- (c) that party enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;

- (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that party; or
- (e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

Intellectual Property means the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, knowhow or confidential information throughout the world for the full period of the rights and all renewals and extensions and specifically includes:

- (a) an invention, discovery, secret process, novel design, improvement or modification of any nature;
- (b) computer program material (including computer software, tables, charts, flow charts algorithms, code, diagrams, plans, techniques, data, structures, logical ideas, concepts and processes);
- (c) product designs, product recipes and methods and formulae and formulations; and
- (d) business name, brand name, trading style or similar right;

International Stockist means a Stockist carrying on business outside of Australia, including via a Retail Outlet in any country and/or territory located outside of Australia;

Minimum Order Requirements means the minimum amount the Stockist is required to spend on Products per order as specified in Item 6 of the Schedule;

Online Store means any website(s) of the Stockist specified in the Stockist Application (and/or such other website(s) from time to time), which are approved by al.ive body as an online store through which the Products may be sold by the Stockist;

Payment means an amount payable under this agreement including an amount payable by way of indemnity or reimbursement and the provision of non-monetary consideration and any amount set off;

Period of High Demand means any Business Day in the months of November and December;

Products means the products specified in Item 2 of the Schedule;

Purchase Price means the amount or amounts specified in an invoice issued by al.ive body to the Stockist (and includes the actual cost of delivery of the Products to the Stockist including any additional or unforeseen costs due to any delay, misinformation or error caused or contributed to by the Stockist and GST in relation to the Products supplied pursuant to the invoice);

Recipient means the party who receives a Taxable Supply under this agreement;

Retail Outlet means any physical premises of the Stockist specified in the Stockist Application (and/or such other physical premises from time to time), which is/are approved by al.ive body as a retail outlet at which the Products may be stocked and sold by the Stockist;

Sales Representative means a sales representative employed or engaged by al.ive body to facilitate the promotion and sale of the Products;

Samples means tester samples of a Product made available to the Stockist for purchase from al.ive body;

Schedule means the schedule attached to this agreement;

Stockist Application means the written application to become a stockist of al.ive body's products to which this agreement is attached;

Supplier means the party who supplies a Taxable Supply under this agreement;

Taxable Supply means a taxable supply (within the meaning of GST Law) made under this agreement;

Term means the Initial Term and, if this agreement is extended in accordance with clause 5.2, the Extended Term; and

Territory means the territory specified in Item 1 of the Schedule.

2. Interpretation

2.1 In this agreement, unless the context otherwise requires:

- (a) the Introduction is correct;
- (b) headings do not affect interpretation;
- (c) singular includes plural and plural includes singular;
- (d) words of one gender include any gender;
- (e) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (f) reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- (g) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (h) reference to a thing (including a right) includes a part of that thing;
- (i) reference to two or more persons means each of them individually and any two or more of them jointly;
- (j) if a party comprises two or more persons:
 - (1) reference to a party means each of the persons individually and any two or more of them jointly;
 - (2) a promise by that party binds each of them individually and all of them jointly;

- (3) a right given to that party is given to each of them individually;
- (4) a representation, warranty or undertaking by that party is made by each of them individually;
- (k) a provision must not be construed against a party only because that party prepared it;
- (l) a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;
- (m) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day;
- (n) a reference to "AUD" is to the Australian currency;
- (o) a reference to "NZD" is to the New Zealand currency;
- (p) a reference to "USD" is to the United States of America currency;
- (q) another grammatical form of a defined expression has a corresponding meaning;
- (r) an expression defined in the Corporations Act 2001 (for example *associate* and *related body corporate*) and the GST Law has the meaning given by the act at the date of this agreement.

2.2 All of the terms of the United Nations Convention of Contracts for the International Sale of Goods (adopted in Vienna, Austria on 10 April 1980) are expressly excluded from this agreement.

3. Acknowledgements

3.1 The parties acknowledge and agree that:

- (a) this agreement is subject to and conditional on al.ive body's acceptance of the Stockist Application and approval of the Stockist as a stockist of the Products;
- (b) al.ive body may consider the proximity of the Stockist's business address (listed in the Stockist Application) in relation to other al.ive body stockists business addresses when exercising its decision to approve the Stockist Application;
- (c) al.ive body may request up to three (3) business referees which al.ive body may contact to establish the Stockist's credentials in accordance with the Stockist Application prior to accepting or rejecting the Stockist Application;
- (d) al.ive body determines which Products are sold throughout the Territory and obtains all technical information (including specifications) and Intellectual Property in relation to the Products from al.ive body and its related bodies corporate; and
- (e) if al.ive body varies the specifications of the Products, deletes or adds new product lines from time to time and al.ive body will provide notice to the Stockist of such variations, deletions or additions.

- 3.2 The Stockist acknowledges and agrees that it has sole responsibility of satisfying itself that the Products and any Samples supplied by al.ive body are suitable for the use of, and sale (as relevant) by, the Stockist or contemplated use of, and sale by, the Stockist and the use of, or contemplated use by the its customers and that it has conducted its own investigations and in relation to the Stockist's investigations, has not relied upon any information, statement, advice or representation by al.ive body of or in relation to:
- (a) the suitability of the Products to any particular physical environment; and
 - (b) the appropriateness of the sale and use of the Products inside its Territory.
- 3.3 The Stockist acknowledges and agrees that:
- (a) the first order for Products from al.ive body must be placed within 30 calendar days of the Stockist receiving written notice from al.ive body of its approval of the Stockist becoming a stockist of the Products;
 - (b) al.ive body makes no representation, warranty or assurance as to any of the matters listed in clause 3.2 and that al.ive body shall not be liable for any loss or cost arising from those matters to the maximum extent permitted by law (except to the extent caused or contributed to by al.ive body).

4. Stockist's rights

- 4.1 Subject to acceptance of the Stockist Application by al.ive body (and approval by al.ive body of the Stockist as a stockist of the Products), al.ive body grants to the Stockist, for the duration of the Term:
- (a) a non-exclusive right to market, stock and sell the Products via the Retail Outlet and/or the Online Store as a stockist, on the terms and conditions in this agreement; and
 - (b) a non-exclusive royalty free licence, to use and apply the Brands and any materials concerning the Products, in performing this agreement (excluding any right to sublicense the use of the Brands or any materials concerning the Products).
- 4.2 Subject to the Stockist's compliance with this agreement, the Stockist may refer to itself as one of al.ive body's "authorised stockists" in respect of the Products during the Term, save that the Stockist must not refer to itself as a sole or exclusive stockist of the Products.
- 4.3 The Stockist acknowledges and agrees that:
- (a) al.ive body and/or its related bodies corporate may market, stock, and sell the Products in and/or outside the Territory; and
 - (b) al.ive body and/or its related bodies corporate may appoint other stockists, licensees or similar persons in respect of the Products in and/or outside the Territory.

5. Term

- 5.1 This agreement commences on the Commencement Date and subject to earlier termination in accordance with clause 19, will expire on the Expiry Date (**Initial Term**).

- 5.2 The parties acknowledge and agree that the Initial Term of this agreement may be extended and that any such extension (including any amended terms) may be negotiated and mutually agreed in writing between the parties before the Expiry Date.

6. Supply of Products

- 6.1 al.ive body agrees to sell or procure the sale of and the Stockist agrees to purchase from al.ive body or other applicable related body corporate all the Stockist's requirements for the Products for stocking purposes at the Retail Outlet and/or for the Online Store from time to time on the terms and conditions of this agreement.
- 6.2 The Stockist must maintain adequate stocks of the Products to promptly satisfy customer requirements at the Retail Outlet and/or for the Online Store.

7. Ordering

- 7.1 All orders for the Products by the Stockist:
- (a) with respect to Australian Stockists, may be placed:
 - (1) via telephone through a Sales Representative;
 - (2) in-person through a Sales Representative; or
 - (3) by the Stockist through al.ive body's online trade portal at <https://trade.alivebody.com.au/>;
 - (b) with respect to International Stockists, must be placed in writing:
 - (1) by emailing orders@alivebody.com.au; or
 - (2) via an online form available from al.ive body upon request by the Stockist;
 - (c) are payable in:
 - (1) AUD for Australian Stockists;
 - (2) NZD for any International Stockist with a business address located in New Zealand; or
 - (3) USD for International Stockists (other than those whose business address is located in New Zealand);
 - (d) must be for at least the Minimum Order Requirements;
 - (e) are subject to approval and acceptance by al.ive body.
- 7.2 With respect to any order placed by an Australian Stockist in accordance with clause 7.1(a):
- (a) unless the Stockist has obtained a Credit Account, payment is required at the completion of the ordering process in accordance with the payment options specified in clause 10.2;

- (b) the Stockist cannot cancel the order without the written agreement of al.ive body;
- 7.3 With respect to any order placed by an International Stockist in accordance with clause 7.1(b):
- (a) the order will be manually processed by al.ive body's customer service team and a quotation will be provided to the International Stockist by al.ive body (including all freight and delivery charges);
- (b) quotations are not valid unless they are provided by al.ive body to the International Stockist in writing;
- (c) any quotation provided by al.ive body to the International Stockist in accordance with clause 7.3(b) remain open for acceptance by the International Stockist for a period of 30 days from the date of the quotation;
- (d) a quotation will be deemed to be accepted by the International Stockist upon payment of the quotation in full to al.ive body in accordance with clause 10.3 and within the period referred to in clause 7.3(c);
- (e) if the quotation is not accepted by the Stockist within 30 days of the date of the quotation that period the offer in the quotation will lapse;
- (f) until the quotation is accepted by the Stockist, al.ive body reserves the right to withdraw the quotation or to vary or alter any part, including without limitation any price or fee specified in the quotation;
- (g) the Stockist cannot cancel an order after acceptance of a quotation without the written agreement of al.ive body;
- (h) the Stockist is responsible for paying all customs and imports taxes within or applying to the Territory.
- 7.4 al.ive body reserves the right to accept or reject any order in whole or in part for any reason, including without limitation the unavailability of Products.
- 7.5 If a Product ordered by the Stockist is out of stock, al.ive body will issue a refund, or a credit note against the Stockist's next order, as agreed between the parties.
- 7.6 al.ive body reserves the right to cancel the production of any of the Products at any time and will give the Stockist written notice of any such cancellation. If this occurs, any Payment received from the Stockist for a Product which is no longer being produced will be refunded in full to the Stockist, or a credit note will be issued by al.ive body against the Stockist's next order, or agreed between the parties.
- 7.7 For the avoidance of doubt al.ive body may reject any order received from the Stockist due to inventory shortages or where the Stockist has breached and not remedied to the reasonable satisfaction of al.ive body any term or condition of this agreement with 7 days of receiving a notice from al.ive body specifying the breach and requiring its remedy.

8. Title, ownership and risk

- 8.1 Title and ownership of each unit of the Products will remain with al.ive body until all amounts owing by the Stockist to al.ive body on any account whatsoever (including the Purchase Price for the Products) (**Amounts Owing**) have been paid in full.
- 8.2 Until the Amounts Owing have been paid in full, the Stockist:
- (a) may, subject to clause 8.3, take possession of the Products and hold them as trustee and agent for al.ive body;
 - (b) must ensure that the Products are insured and stored or identified so that they are readily distinguishable from other goods held by the Stockist or other persons.
- 8.3 Until the Amounts Owing have been paid, the Stockist has the right to move, sell and otherwise use the Products in the ordinary course of its business, subject to the following:
- (a) the Stockist may sell the Products, but only as trustee and agent for al.ive body; and
 - (b) the Stockist must hold the proceeds it receives from any sale of the Products as trustee and agent for al.ive body; and
 - (c) if the Products become part of a product or mass through manufacturing, processing, assembly or becoming commingled, al.ive body's security interest continues in that product or mass (**Commingled Property**) to the extent permitted by law; and
 - (d) without limiting the foregoing, all accounts relating to any sale of the Products are owned by al.ive body and any rights of the Stockist in respect of such accounts are transferred to al.ive body.
- 8.4 Despite clause 8.3(a), the Stockist must not represent to any third parties that it is acting as agent of al.ive body and al.ive body will not be bound by any contracts with third parties to which the Stockist is a party.
- 8.5 If the Stockist fails to comply with any terms of this agreement in relation to the payment of any Amount Owing or otherwise or becomes insolvent, then:
- (a) immediately on al.ive body's request, the Stockist must return to al.ive body any Products acquired from al.ive body; and
 - (b) al.ive body may (by its servants or agents) enter the premises at which those Products are stored, and seize possession of them; and
 - (c) al.ive body may retain, sell or otherwise dispose of those Products.
- 8.6 The Stockist must not assign or grant a security interest in respect of any accounts owed to it in relation to the Products without al.ive body's prior written consent. al.ive body has a security interest in all such accounts to secure the Amounts Owing.
- 8.7 Without limiting the meaning of Amounts Owing, if the Stockist makes a payment to al.ive body at any time whether in connection with this agreement or otherwise al.ive body may apply that payment as it sees fit.

- 8.8 All risk in the Products will pass to the Stockist when the Products leave al.ive body's Premises, regardless of how delivery is effected.
- 8.9 If Chapter 4 of the PPSA would otherwise apply to the enforcement of this agreement the Stockist agrees that the following provisions of the PPSA will not apply to the enforcement of this agreement:
- (a) section 95 (notice of removal of accession), to the extent that it requires al.ive body to give a notice to the Stockist;
 - (b) section 96 (when a person with an interest in the whole may retain an accession);
 - (c) subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (d) section 125 (obligation to dispose of or retain collateral);
 - (e) section 130 (notice of disposal), to the extent that it requires al.ive body to give a notice to the Stockist;
 - (f) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (g) subsection 132(4) (statement of account if no disposal);
 - (h) section 135 (notice of retention);
 - (i) section 142 (redemption of collateral); and
 - (j) section 143 (reinstatement of security agreement).
- 8.10 Notices or documents required or permitted to be given to al.ive body for the purposes of the PPSA must be given in accordance with the PPSA.
- 8.11 The Stockist consents to al.ive body effecting a registration on the PPSA register (in any manner al.ive body considers appropriate) in relation to any security interest contemplated by this agreement and the Stockist agrees to provide all assistance reasonably required to facilitate this.
- 8.12 The Stockist waives the right to receive notice of a verification statement in relation to any registration on the register.
- 8.13 In this clause 8.13:
- (a) a reference to **products** means the original goods supplied as described in each invoice and also includes proceeds and Commingled Property when the context permits;
 - (b) **paid** means receipt of cash or cleared funds by al.ive body in full satisfaction of the Amounts Owning;
 - (c) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it;

- (d) the following words have the respective meanings given to them in the PPSA: account, commingled, proceeds, purchase money security interest, register, registration, security interest and verification statement.

9. Delivery

- 9.1 Subject to clause 9.2, the Stockist is wholly responsible for:
- (a) loading and collection of the Products from al.ive body's Premises;
 - (b) transportation of the Products from al.ive body's Premises; and
 - (c) delivery insurance.
- 9.2 Products may be shipped directly by al.ive body (or its related bodies corporate) to the Stockist's warehouse (if any) or freight forwarding centres in the Territory.
- 9.3 The Stockist acknowledges that al.ive body (or its related bodies corporate) does/do not ship Products to any post office (PO) box, hotel, motel and/or other place of short-term accommodation of the Stockist.
- 9.4 The delivery of any Products will be conducted at the Stockist's sole risk. al.ive body is not responsible for the destruction, damage or loss of the Products in transit (except to the extent that such destruction, damage or loss is caused or contributed to by the unlawful or negligent acts or omissions of al.ive body). It is the responsibility of the Stockist to arrange and pay for insurance required.
- 9.5 Should the Stockist agree with al.ive body for al.ive body to organise for the delivery of the Products then al.ive body shall do so on the basis that:
- (a) delivery of the Products shall be made to the delivery address nominated by the Stockist on the Stockist Application for the Products;
 - (b) al.ive body will use its reasonable endeavours to deliver the Products ordered to the Stockist in a reasonable time, but will not be responsible for any delays in delivery;
 - (c) the Stockist agrees to pay the costs of delivery for the Products that are specified in:
 - (1) Item 10 of the Schedule for an Australian Stockist; and
 - (2) Item 11 of the Schedule for an International Stockist; and
 - (d) the Stockist agrees that al.ive body accepts no liability for either the choice of the party to deliver the Products or that party's conduct.
- 9.6 Subject to a Period of High Demand, all orders for Products that are accepted by al.ive body and are received by 12 noon on any Business Day, subject to available inventory, will be processed and ready for dispatch from al.ive body's Premises within one (1) Business Day of receipt of the order by al.ive body, save that Product orders received and accepted by al.ive body on a Friday will be processed and ready for dispatch within two (2) Business Days. al.ive body otherwise gives no warranty as to time of delivery or the availability of any Products.

- 9.7 During a Period of High Demand, orders for Products shall be required to be placed before the Cut Off Date. The Stockist will be notified by al.ive body of the Cut Off Date within a reasonable time prior to the Period of High Demand. If the Stockist fails to order Products by the Cut off Date, al.ive body cannot advise or give any guarantees of expected delivery or shipping timeframes.
- 9.8 al.ive body may deliver the Products ordered in part with written notice to the Stockist. If Products are delivered in part pursuant to such notice, the Stockist must accept the part-delivery and must pay any outstanding Purchase Price for the Products delivered (including in accordance with any Credit Account).

10. Prices and payment

- 10.1 al.ive body shall invoice the Stockist for the Products ordered by the Stockist at the prices determined in accordance with al.ive body's subsisting price list for the Products, as updated from time to time by notice in writing from al.ive body to the Stockist before the commencement of a new price list. al.ive body's price list for the Products effective from 4 September 2023 is attached in the **Error! Reference source not found.**
- 10.2 Credit card, PayPal and EFT transfer are acceptable methods of payment for Australian Stockists purchasing via the al.ive body's online trade portal or via a Sales Representative.
- 10.3 International Stockists will be required to make payment through the payment specified on the quotation (being either AirWallex or SWIFT).
- 10.4 al.ive body may at its discretion charge default interests on amounts owing, but not paid, at the rate charged by Australia and New Zealand Banking Group, al.ive body's principal banking institution to its customers on overdrafts in excess of \$100,000, plus 2% from the date when such payment fell due.

11. Stockist's general obligations

11.1 Conduct

The Stockist must at all times:

- (a) act in good faith;
- (b) carry on its business in an efficient professional manner and with due care and skill;
- (c) ensure that all its dealings with al.ive body and all customers and the public adhere to the highest standards of honesty and integrity, fair dealing and ethical conduct; and
- (d) observe and comply with any and all procedures, standards and directions reasonably specified by al.ive body from time to time in relation to the marketing, display and sale of the Products.

11.2 Reasonable efforts to maximise sales

The Stockist shall use its reasonable efforts to promote and maximise sales of the Products at the Retail Outlet and/or the Online Store (as relevant) by all appropriate and lawful means including by any such means as al.ive body may reasonably require from time to time.

11.3 **Costs**

The Stockist is responsible for all expenses and outgoings in performing its obligations under this agreement, except for any costs and expenses agreed in advance in writing to be paid by al.ive body.

11.4 **Representatives**

During the Term, the parties will communicate via the representatives from each party as set out in Item 8 and Item 9 of the Schedule, or as notified in writing from time to time.

11.5 **Records and reports**

- (a) The Stockist must create and maintain proper and detailed records of the performance of its obligations pursuant to this agreement.
- (b) al.ive body or its authorised representatives may inspect those records at any time during usual business hours, upon giving three (3) Business Days' prior notice to the Stockist.

11.6 **Damaged Products**

- (a) The Stockist must not sell any Products which are defective or spoiled. Without limiting the generality of the foregoing, before selling any Products at a Retail Outlet and/or Online Store, the Stockist must, at its own cost, verify that the Products are in a saleable condition, including by verifying the condition of the Products, the packaging material and that the Products are within any best before date and are commercially saleable.
- (b) When the Products are delivered to the Stockist, the Stockist must promptly inspect the Products and must notify al.ive body in writing to orders@alivebody.com.au of any defective Products within 10 days of receipt of the Products by the Stockist ("**Return Period**") of any fault or defect in the delivered Products ("**Rejection Notice**"). The Stockist will be deemed to have accepted delivered Products unless al.ive body receives a Rejection Notice within the Return Period. The Stockist waives any right to reject or revoke acceptance after that time.
- (c) All Products returned for refund or credit must:
 - (1) except for faulty or defective Products which are the subject of a Rejection Notice, be accompanied by original packaging, remain unused and in original condition; and
 - (2) be accompanied by the original proof of purchase or other relevant original documentation.
- (d) Except in the case of Products which are the subject of a Rejection Notice, freight to and from al.ive body on all returns is to be borne by the Stockist. Handling charges or freight for the return of Products, if not prepaid, will be deducted from the total amount of credit or refund or otherwise charged to the Stockist.
- (e) Provided that clause 11.6(c) is satisfied, and the Products are a standard item that al.ive body has in stock on a regular basis, the Stockist may return Products for a

credit note, or at the sole absolute discretion of al.ive body a refund, within the Return Period.

- (f) In the case of all Products returned to al.ive body, al.ive body may withhold, deduct or set-off any refund or credit note to the which the Stockist is entitled to against any amount owing by the Stockist to al.ive body.

11.7 **Storage of Products**

The Stockist must at all times store the Products in such conditions and in a manner which maintains the condition and quality of the Products and must comply with any and all directions given by al.ive body in this regard from time to time.

11.8 **Product recall**

The Stockist must cooperate with al.ive body in the implementation of any product recall that may be instituted by al.ive body. The Stockist must not make any public or private statement about the recall without the prior written consent of al.ive body. Subject to the terms of this agreement, the party responsible for the situation resulting in the recall shall bear the costs and expenses associated with that recall.

11.9 **Sales and labelling of the Products**

- (a) Subject to clause 11.12, the Stockist must not and must not permit or assist any other person directly or indirectly to, without al.ive body's prior written consent:
 - (1) sell, stock, advertise or represent the Products online other than through the Online Store;
 - (2) sell, stock, advertise or represent the Products at any secondary business address that is not a Retail Outlet;
 - (3) re-package the Products, process them or incorporate them in other similar products; or
 - (4) obscure, remove, conceal or otherwise interfere with any labels, markings, or other indications on the Products, and must not remove or tamper with any of the contents therein.
- (b) With the exception of persons employed directly by the Stockist in the business of the Stockist and at the Retail Outlet(s) and/or in respect of the Online Store(s), the Stockist must not appoint additional persons or companies to act as re-sellers, marketplaces or stockists of the Products in the Territory without the prior written consent of al.ive body.
- (c) If the Stockist becomes aware of any unauthorised imports or sales of the Products in the Territory or elsewhere, the Stockist must immediately notify al.ive body of such circumstances.

11.10 **Standard and conduct of the Stockist's business**

- (a) In order to observe and maintain, in the conduct of the promotion and selling of the Products, the standards, systems, methods and quality of product presentation equal

to those prescribed from time to time by al.ive body and in addition and without limiting the generality of the foregoing, the Stockist must in all respects:

- (1) use its reasonable efforts to develop and maintain a favourable relationship with customers which will encourage repeat business;
- (2) not carry on any business which in the opinion of al.ive body will prejudice or otherwise interfere with the ability of the Stockist to fully and properly carry out its obligations under this agreement.

11.11 Protection of Intellectual Property

The Stockist must not and must not cause, permit or assist any other person directly or indirectly to do anything that may infringe the Intellectual Property rights al.ive body or its related bodies corporate.

11.12 Compliance with laws

The Stockist is responsible for compliance with all laws, regulations and standards in the Territory with regard to the marketing, stocking and sale of the Products.

11.13 Insurance

- (a) The Stockist must maintain or cause to be maintained at its cost during the Term and for a period of five (5) years after the termination or expiration of this agreement, adequate product liability and third party liability insurance in respect of the Products and such other insurances which a prudent stockist would maintain against usual business risks and risks specific to a stockist.
- (b) The Stockist must, upon request from al.ive body, produce evidence of the currency of the insurance policies.

11.14 Prohibited use

The Stockist must not use the Products to manufacture or enable the manufacture of further quantities of the Products or similar products provide or sell or otherwise make available the Products to any person who the Stockist knows, or ought reasonably know, intends to do any of those things.

12. al.ive body's general obligations

12.1 al.ive body may provide to the Stockist instructions and training on how to market and display the Products and how to handle technical queries in relation to the Products from time to time and at such times as agreed by the parties.

12.2 al.ive body may furnish to the Stockist assistance and guidance in the promotion of the Products, it being acknowledged by the Stockist that:

- (a) the Stockist may be selected because of the Stockist's knowledge of and its ability and capacity to market and sell the Products; and
- (b) al.ive body is under no obligation to provide such assistance and guidance.

- 12.3 During the Term, al.ive body may also provide the Stockist with updated technical, promotional and other literature relating to the Products (as relevant).
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13. Samples

The Stockist acknowledges and agrees that:

- (a) Samples are for customer and consumer trials only and are priced accordingly;
 - (b) no Samples shall be used for personal use by the Stockist, its employees, agents or nominees;
 - (c) the Stockist:
 - (1) may only order two (2) stock keeping units of Samples per 12 months, per Retail Outlet;
 - (2) after ordering any Samples, subject to clause 13(c), must order the saleable full-sized version of the relevant Product(s) before they are permitted to order more Samples.
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14. Intellectual Property

14.1 The Stockist acknowledges and agrees that:

- (a) the Stockist shall not (other than to the limited extent provided under clause 4.1(b)) acquire any right or interest in the Brands or the Intellectual Property in the Products and any materials concerning the Products by virtue of this agreement or otherwise; and
- (b) all existing goodwill associated with the Brands or the Products vests in al.ive body and, on creation, all future goodwill associated with the Brands or the Products that may arise from the Stockist's business of marketing, distributing and selling the Products in the Territory vests in al.ive body.

14.2 The Stockist must take all steps as are practicable to ensure that the Brands and the Intellectual Property in the Products and any materials concerning the Products vests in and remain the property of al.ive body and/or its related bodies corporate. The Stockist must reasonably assist al.ive body to facilitate registration of the Brands and any Intellectual Property in the Products and any materials concerning the Products in the Territory in the name of al.ive body and/or its related bodies corporate.

14.3 The Stockist must not during the Term or after its termination, apply for registration as a trade mark, domain name, business or company name any word or logo that is the same as, that is substantially identical with or deceptively similar to or that consists of, any of the Brands.

14.4 If the Stockist becomes aware of any infringement or potential infringement of any Intellectual Property of al.ive body and/or its related bodies corporate in the Territory or elsewhere, the Stockist must immediately notify al.ive body of such circumstances and cease supplying any Products to such persons (where relevant).

- 14.5 The Stockist must co-operate and comply to the fullest extent possible with al.ive body's reasonable requests in the event of the Brands, the Products or any materials concerning the Products being alleged to infringe the Intellectual Property of any person, or if any person infringes the Brands or the Intellectual Property in the Products or any materials concerning the Products.

15. Confidentiality

- 15.1 A party must keep the confidential information of the other party confidential.
- 15.2 A party may only use the confidential information of the other party:
- (a) if necessary to perform that party's obligations under this agreement; or
 - (b) if the other party consents to the use.
- 15.3 A party may only disclose the confidential information of the other party:
- (a) to that party's professional advisers;
 - (b) if required by law;
 - (c) if necessary to perform that party's obligations under this agreement; or
 - (d) if the other party consents to the disclosure.
- 15.4 After the termination or expiration of this agreement a party's right to use the confidential information of the other party ceases. Notwithstanding this, each party must continue to observe the obligations of confidentiality in relation to the other party's confidential information set out in clauses 15.1 and 15.3, which shall survive the termination or expiration of this agreement.
- 15.5 In this clause, **confidential information** is:
- (a) any term of this agreement;
 - (b) any information acquired by a party for the purpose of, or under the terms of, this agreement;
 - (c) any other information belonging to a party which is of a confidential nature.

16. Warranties

- 16.1 Each party represents and warrants in favour of the other party that:
- (a) it has the right to enter into this agreement and comply with it; and
 - (b) it has taken all necessary corporate action to authorise the execution and delivery of, and the performance of its obligations under, this agreement.
- 16.2 The Stockist represents in favour of al.ive body that it has on the Commencement Date, and will have at all relevant times during the Term, the necessary skills, knowledge, expertise, personnel and ability to perform its obligations under this agreement.

17. Indemnity

17.1 Each party (**Indemnifying Party**) must indemnify, and keep indemnified, the other party (**Indemnified Party**) against all claims and all damages, losses, costs, liabilities, charges and expenses (including all legal professional fees on a full indemnity basis) suffered or incurred by the Indemnified Party, arising wholly or in part from:

- (a) any act or omission of the Indemnifying Party or its employees, agents, sub-contractors or employees of sub-contractors, including negligent acts or omissions; or
- (b) any breach of the obligations under this agreement by the Indemnifying Party or its employees, agents, sub-contractors or employees of sub-contractors; or
- (c) any warranty in this agreement being or becoming untrue,

except to the extent caused or contributed by the Indemnified Party or its employees, agents, sub-contractors or employees of sub-contractors.

17.2 This clause 17 shall survive the expiration or termination of this agreement.

18. Limitations of liability

18.1 To the maximum extent permitted by law, al.ive body excludes all warranties and liabilities (whether express or implied) in relation to the Products supplied, including without limitation, warranties relating to fitness for purpose, condition, suitability, title, quality, design, safety defects or conformity of the Products.

18.2 To the extent that al.ive body cannot exclude liability under law, including without limitation as a result of a breach of any conditions or warranties implied by the *Competition and Consumer Act 2010* (Cth), the liability of al.ive body shall be limited (to the maximum extent permitted by law) to, as determined by al.ive body in exercise of its sole discretion:

- (a) the resupply of the Products; or
- (b) a refund of the Purchase Price for the Products (whether by refund or credit note).

18.3 Other than specifically stated in this agreement and to the maximum extent permitted by law, al.ive body's is not liable for and the Stockist hereby releases and indemnifies al.ive body from any Claims arising directly or indirectly out of or in connection with the Stockist's use or application of the Products other than in accordance with al.ive body's instructions or recommendations (except to the extent caused or contributed by al.ive body's negligent act or omission).

19. Termination

19.1 The parties may terminate this agreement at any time by mutual agreement in writing.

19.2 A party (**Non-Defaulting Party**) may terminate this agreement immediately by giving notice in writing to the other party (**Defaulting Party**) if the Defaulting Party:

- (a) is in material or persistent breach of this agreement and such breach has not, if capable of remedy, been remedied to the reasonable satisfaction of the Non-Defaulting Party within 7 days of receiving a notice in writing specifying the breach and requiring its remedy;
 - (b) is in material or persistent breach of this agreement and such breach is incapable of remedy;
 - (c) suffers an Insolvency Event; or
 - (d) does an unreasonable act which, in the Non-Defaulting Party's reasonable opinion, reflects unfavourably on the Non-Defaulting Party.
- 19.3 Without limiting al.ive body's other rights to terminate this agreement, al.ive body may terminate this agreement:
- (a) by giving a notice in writing to terminate on the date two (2) months after deemed receipt of the notice by the Stockist, and upon such date, this agreement shall terminate with immediate effect; or
 - (b) with immediate effect by giving written notice to the Stockist, if the Stockist:
 - (1) ceases to or threatens to cease carrying on business; or
 - (2) suffers a change in Control, other than with the consent of al.ive body.
- 19.4 The termination or expiration of this agreement however caused:
- (a) shall not affect any clauses of this agreement which are stated, or by their nature are intended, to continue after termination; and
 - (b) is, subject to clause 19.5, without prejudice to any rights or obligations of the parties which have accrued prior to termination or expiration.
- 19.5 Upon termination or expiration of this agreement for whatever reason:
- (a) all outstanding amounts become immediately due and payable;
 - (b) the Stockist must comply with all reasonable directions of al.ive body relating to the treatment of the Stockist's stock of saleable Products;
 - (c) subject to clause 19.6:
 - (1) the Stockist must cease stocking the Products and using the Brands and all materials concerning the Products, except in accordance with any directions provided by al.ive body;
 - (2) al.ive body shall not be required to deliver any Products ordered by the Stockist but not yet delivered, in which case al.ive body shall refund in full any amounts paid to al.ive body by the Stockist in respect of such order.
- 19.6 For a period of two (2) months following termination or expiration of this agreement, the Stockist may, at al.ive body's discretion and upon the prior written consent of al.ive body, sell its stock of saleable Products existing at the date of such termination or expiration to al.ive

body or to such person nominated by al.ive body in writing at a price at least equal to the purchase price of the Products in al.ive body subsisting price list, plus all packaging and shipping costs and any tax, duty, levy, charges and any other expenses paid by the Stockist in purchasing the Products from al.ive body.

20. Dispute resolution

- 20.1 If a dispute arises in connection with this agreement, a disputant may give the other disputant a notice specifying the dispute.
- 20.2 Within five (5) Business Days after the notice is given, the disputants (each represented by its chief executive officer or other person authorised by the disputant to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute.
- 20.3 Unless the disputants otherwise agree, the dispute must be referred to mediation if not resolved within 15 Business Days after the notice is given.
- 20.4 The disputants must appoint a mediator within 20 Business Days after the notice is given. If they fail to agree, the mediator must be appointed by the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative. The mediation must be conducted in South Australia in accordance with, and subject to, the Resolution Institute Mediation Rules 2016.
- 20.5 The mediator assists in negotiating a resolution of the dispute. The mediator may not make a decision binding on the disputants, unless the disputants have so agreed in writing.
- 20.6 The mediation ends if the dispute is not resolved within 20 Business Days after the mediator's appointment.
- 20.7 Each disputant must keep confidential:
- (a) any information or documents disclosed in the course of the mediation;
 - (b) any discussions between the disputants in the course of the mediation.
- These may be used only to resolve the dispute.
- 20.8 Unless disclosure is required by law:
- (a) each disputant must keep confidential all information about the existence, conduct, status or outcomes of the mediation and the terms of any mediation settlement agreement;
 - (b) this information and these terms may be published or announced only with the consent of the disputants and in terms agreed by them in writing.
- 20.9 The dispute resolution process does not affect any party's obligations under this agreement.
- 20.10 Neither disputant may commence court proceedings in respect of the dispute until the mediation period ends. This does not affect a disputant's right to seek injunctive or urgent declaratory relief.

- 20.11 Each disputant must pay its own costs in respect of the dispute resolution process. The disputants must pay in equal shares the mediator's costs and the costs of third party reports and enquiries requested by the mediator.

21. Announcements

A party must not make any press or other public announcement, comment or release relating to this agreement without the prior consent of the other party as to the form, content and manner of the announcement, comment or release, such consent not to be unreasonably withheld, except if required by law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other party.

22. Force majeure

A party is not liable for a breach of this agreement, to the extent that the breach is caused by circumstances outside that party's direct or indirect control or influence and for the period that those circumstances continue, if that party:

- (a) notifies the other party as soon as reasonably practicable of the breach and details regarding the relevant circumstances; and
- (b) exercises its best endeavours to remedy the breach or otherwise rectify the cause of that breach as quickly as possible.

23. Taxation and duties

- 23.1 All Payments are exclusive of GST (unless specified otherwise). Any government charges or duties including sales tax, GST, use or excise taxes or similar taxes are payable by the Stockist.
- 23.2 A Recipient must pay to the Supplier any GST payable on a Taxable Supply. The Recipient must pay the GST when the Payment becomes payable or when the Supplier issues a Tax Invoice, whichever is later.
- 23.3 If a party (**claimant**) acquires a Taxable Supply for which it is entitled to reimbursement by the other party, the reimbursement amount is reduced by the Input Tax Credit to which the claimant is entitled.
- 23.4 The Supplier must issue an Adjustment Notice immediately it becomes aware of an Adjustment Event in respect of a Taxable Supply. Within 14 days after the Supplier issues an Adjustment Note:
- (a) the Recipient must pay the Supplier any increase in the GST Amount;
 - (b) the Supplier must pay the Recipient any decrease in the GST Amount.
- 23.5 If:
- (a) one party (**payer**) must pay a GST Amount;

- (b) a penalty, interest or additional tax (**extra liability**) is imposed in respect of the GST Amount because of default of another party (**defaulter**); and
- (c) the payer provides to the defaulter proof of the extra liability,

the defaulter must pay the amount of the extra liability to the payer within 14 days after the payer provides that proof to the defaulter.

24. Notice

24.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.

24.2 Notice may be given to a person:

- (a) personally;
- (b) by leaving it at the person's address last notified;
- (c) by sending it by pre-paid mail to the person's address last notified;
- (d) by sending it by electronic mail to the person's email address last notified.

24.3 Notice is deemed to be received by a person:

- (a) when left at the person's address;
- (b) if sent by pre-paid mail, three Business Days after posting;
- (c) if sent by electronic mail, at the time and on the day shown in the sender's 'sent items' folder, if it shows that the whole notice was sent to the person's email address last notified and no automatically generated message is received by the sender that the email was undeliverable or undelivered.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.

24.4 If two or more people comprise a party, notice to one is effective notice to all.

25. Miscellaneous

25.1 The authoritative and binding version of this agreement is in the English language. Any translation of this agreement is for convenience only.

25.2 This agreement shall not be construed as constituting a partnership, joint venture or any form of fiduciary relationship between the parties. The Stockist is an independent contractor and not an agent of al.ive body.

25.3 A party may only assign its rights or obligations under this agreement with the written consent of the other party.

25.4 This agreement may only be amended in writing signed by the parties.

- 25.5 A party may only waive a breach of this agreement in writing signed by that party or its authorised representative. A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).
- 25.6 A party's consent is valid only if it is in writing and signed by that party or its authorised representative. Unless otherwise provided, a party may give or withhold consent or form an opinion:
- (a) in that party's absolute discretion, when that party chooses;
 - (b) with or without conditions;
 - (c) without giving reasons.
- 25.7 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.
- 25.8 This agreement may be executed in any number of counterparts. A counterpart may be a facsimile or digital scan. Together all counterparts make up one document.
- 25.9 This agreement is governed by the laws of South Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of South Australia and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them.
- 25.10 If the Stockist enters into this agreement in its capacity as trustee of a trust then it is bound personally as well as in that trustee capacity.
- 25.11 Each Party must pay their own costs of preparing and negotiating this agreement and any document required by this agreement.

Schedule

Item 1 – Territory	Australian Stockist (as applicable) Australia	International Stockist (as applicable) The country and/or territory in which the business address of the Stockist is located.
Item 2 – Products	<p>The al.ive body product ranges which the Stockist applies for under the Stockist Application, and which are accepted in writing by al.ive body.</p> <p>With respect to the al.ive body 'body' range, these products include:</p> <ul style="list-style-type: none"> • wash & lotion; • hair care; and • hand & lip. <p>With respect to the al.ive body 'baby' range, these products include:</p> <ul style="list-style-type: none"> • baby wash & lotion; • balms & creams; and • bath time. <p>With respect to the al.ive body 'home' range, these products include:</p> <ul style="list-style-type: none"> • cleaning; • kitchen; • home fragrance; and • fixtures & fittings. 	
Item 3 – Brands	al.ive body, al.ive baby and al.ive home (as relevant, having regard to the Products to be stocked by the Stockist under this agreement).	
Item 4 – Commencement Date	If the Stockist Application is accepted by al.ive body (and al.ive body approves the Stockist as a stockist of the Products), the date on which al.ive body notifies the Stockist in writing of the approval of the Stockist as a stockist of the Products.	
Item 5 – Expiry Date	The date that falls two (2) years after the Commencement Date.	
Item 6 – Minimum Order Requirements	<p>The Minimum Order Requirements for Australian Stockists are as follows:</p> <ul style="list-style-type: none"> • <u>AUD \$750 (exclusive of GST) for initial orders and then AUD\$500 per order (exclusive of GST)</u> for Stockists who stock the al.ive body 'body' range or al.ive body 'home' range (inclusive of any additional ranges); • <u>AUD \$500 (exclusive of GST for initial orders and then AUD\$250 per order (exclusive of GST)</u> for Stockists who stock the al.ive body 'baby' range (where no other ranges are stocked). 	

	<p>The Minimum Order Requirements for International Stockists are as follows:</p> <ul style="list-style-type: none"> • USD\$700 per order; and • USD\$2500 per six month period throughout the Term 	
<p>Item 7 – al.ive body’s Premises</p>	<p>Level 1, 539 Brighton Road, South Brighton SA 5048</p>	
<p>Item 8 – Representative of al.ive body</p>	<p>Name:</p>	<p>Nathan Brown</p>
	<p>Mobile:</p>	<p>0437 780 835</p>
	<p>Email:</p>	<p>nathan@alivebody.com.au</p>
<p>Item 9 – Representative of the Stockist</p>	<p>The “Purchasing contact” of the Stockist as specified in the Stockist Application.</p>	
<p>Item 10 – Australian Stockist Shipping (if applicable)</p>	<p>Shipping rates are as follows for Australian Stockists:</p> <ul style="list-style-type: none"> • AUD\$40 for orders over AUD\$500 • AUD\$60 for orders over AUD\$1,000 • AUD\$80 for orders over AUD\$1,500 • AUD\$100 for orders over AUD\$2,000 • AUD\$125 for orders over AUD\$3,000 • AUD\$150 for orders over AUD\$4,000 • AUD\$175 for orders over AUD\$5,000 <p>Subject to the provisions in clause 9, shipping times within Australia are estimated to be between 5 to 14 Business Days.</p>	
<p>Item 11 – International Stockist Shipping (if applicable)</p>	<p>Shipping rates for International Stockists:</p> <ol style="list-style-type: none"> 1. is manually calculated by a member of al.ive body customer service team once the International Stockist has placed an order with al.ive body; and 2. will be included in the quotation provided to the International Stockist once an order has been placed and processed by a member of al.ive body’s customer service team. <p>Subject to the provisions in clause 9, international shipping times are estimated to be between 5 to 30 Business Days.</p>	