

## 1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions unless the context otherwise requires the following words and expressions have the following meanings:

**Applicable Laws** means all national, supranational, foreign or local laws, legislation, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;

**Business Day** means any day which is not a Saturday, a Sunday or a bank or public holiday in the country in which Upfield (as defined below) is registered;

**Conditions** means these terms and conditions and any special terms and conditions agreed in writing between Upfield and the Supplier as amended from time to time in accordance with Condition 21.12;

**Confidential Information** means the provisions of the Contract and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods or Personal Data, in all cases whether disclosed orally or in writing before or after the date of the Contract.

**Contract** means the contract between Upfield and the Supplier for the purchase of the Goods and/or Services in accordance with these Conditions;

**Data Controller** has the meaning set out in the GDPR;

**Data Processing Agreement** means a data processing agreement to be entered into between the parties in such form as Upfield may from time to time specify;

**Data Protection Laws** means the General Data Protection Regulation (Regulation (EU)2016/679) ("GDPR"), and any legislation ratifying or otherwise adopting, replacing or supplementing the GDPR in any of the jurisdictions the parties operate; and any other laws and regulations relating to privacy of the processing of data of natural persons relevant in any other applicable jurisdiction;

**Deliverables** means all documents, products and materials developed by Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form;

**Delivery Location** means the location for delivery of the Goods as specified in the Order;

**Equipment** means the items supplied by Upfield to the Supplier for use by the Supplier for the purposes of the Contract;

**Expenses** means the reasonable expenses properly and necessarily incurred by Supplier in the course of performing the Services;

**Expenses Policy** means such expenses policy as may be notified by Upfield to the Supplier from time to time;

**Good Industry Practice** mean the standards, practices, methods and procedures conforming to all Applicable Law and the degree of skill, care, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced person undertaking all or part of the duties to be carried out and obligations imposed on the Supplier under the Contract under the same or similar circumstances;

**Goods** means the goods (including any part or parts of them) which the Supplier is to provide to Upfield pursuant to the Order in accordance with these Conditions;

**Group** means, in relation to any company, that company and every Subsidiary or Holding Company of that company or a Subsidiary or Holding Company of any such Subsidiary or Holding Company from time to time;

**Group Company** means any company within the Group of the relevant company;

**Holding Company** means a company which, in relation to another company (its Subsidiary), holds a majority of the voting rights in it or is a member of it and has the right to appoint or remove a majority of its board of directors, or is a member of it and controls alone a majority of the voting rights in it;

**Intellectual Property Rights** means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the country in which Upfield (as defined below) is registered and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing;

**New Supplier** means any person that provides services in replacement of any of the Services whether those services are the same as or similar to any or all of the Services;

**Order** means any order from Upfield to the Supplier for the supply of Goods and/or Services in such form as Upfield may determine from time to time;

**Personal Data** has the meaning set out in the GDPR;

**Service Level** means the service level (if any) set out in the Order for the relevant Services;

**Services** means the services which the Supplier is to provide to Upfield pursuant to the Order in accordance with these Conditions;

**Specification** means the specification or stipulations for the Goods and/or Services as set out in the Order, or as otherwise notified in writing to the Supplier in accordance with the Contract;

**Subsidiary** means a company in which another company (its Holding Company) holds a majority of the voting rights in it or is a member of it and has the right to appoint or remove a majority of its board of directors, or is a member of it and controls alone a majority of the voting rights in it;

**Supplier** means the person or firm from whom Upfield purchases the Goods and/or Services;

**Upfield** means the Upfield buying party specified in the Order (or if no buyer is specified Upfield Europe B.V. (a company registered in the Netherlands under company no. 63649292 whose registered office is at Nassaukade 3, 3071 JL, Rotterdam, Netherlands)); and

**Upfield Policies and Procedures** means the 'Code of Business Principles' set out in <https://upfield.com/purpose/responsibility> and such other policies and procedures as Upfield may from time to time specify, including any Expenses Policy.

1.2 The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

## 2 BASIS OF CONTRACT

2.1 The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Supplier purports to apply under any quotation, order acknowledgement or any other document issued by the Supplier).

2.2 The Order is an offer made by Upfield to the Supplier and the Contract shall come into effect upon acceptance of the Order by the Supplier. Unless previously withdrawn by Upfield, Orders shall be deemed accepted if not rejected by the Supplier by notice in writing within seven (7) days of their date.

2.3 Where any correspondence (including emails) specify a volume of the Goods and/or Services to be purchased by Upfield, such volumes shall be non-binding estimates only and shall be without prejudice to the volumes actually purchased under the Contract, unless expressly agreed otherwise in writing. Upfield may forward regular forecasts of requirements to the Supplier. Such forecasts are non-binding estimates only and are intended to assist the Supplier in scheduling its production and delivery of the Goods and/or performance of the Services and they are without prejudice to any volumes actually purchased under the Contract, unless expressly agreed otherwise in writing.

## 3 SUPPLY OF GOODS

3.1 The Supplier undertakes, represents and warrants to Upfield that the Goods and their packaging and labelling shall:

- (a) conform to the Specification and with any instructions of Upfield, and shall otherwise meet the requirements of the Order and the Contract;
- (b) be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification, Orders or Contract);
- (c) be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of Upfield);
- (d) comply with all Applicable Laws; and
- (e) conform strictly as to quality, quantity and description with any samples provided by the Supplier.

3.2 The Supplier shall use its best endeavours to transfer or assign to Upfield or otherwise obtain for the benefit of Upfield any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods to the extent that the same is capable of such transfer or assignment to Upfield.

## 4 DELIVERY OF GOODS

4.1 Delivery of the Goods shall take place strictly in accordance with Upfield's delivery instructions whether given in the Order or separately. Where no instructions are given, delivery shall be DDP (Delivery Location) Incoterms 2010.

4.2 Time of delivery is of the essence of the Contract. The Supplier shall deliver on the date and to the location specified in the Order. Upfield shall be under no obligation to accept delivery of the Goods before the specified delivery time but reserves the right to do so.

4.3 Upfield shall have the right to change its delivery instructions at any time, on paying any additional reasonable costs to be incurred by the Supplier as a result of any such change provided such costs are agreed in advance in writing by Upfield. Where Upfield requires the postponement or suspension of a delivery date, the Supplier shall store the Goods and, with the prior written consent of Upfield, insure them at Upfield's cost against damage, destruction or other loss.

4.4 A detailed description of the Goods together with instructions for their use, each quoting the Order number, shall accompany the Goods together with a certificate of the Supplier in such form as Upfield shall require confirming the conformance of the Goods with the Specification.

4.5 Upfield shall not be obliged to accept quantities of the Goods which vary from those specified in the Specification or the Order.

4.6 The Goods will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition. Upfield shall not be obliged to return to the Supplier any packaging materials for the Goods.

4.7 The Supplier shall not deliver the Goods in instalments without Upfield's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all shall entitle Upfield to the remedies set out at Condition 11.1 (Remedies).

## **5 ACCEPTANCE**

5.1 Upfield shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or after any latent defect has become apparent. No inspection or testing by Upfield whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods shall be deemed to constitute or evidence acceptance or approval of the Goods nor be deemed a waiver of Upfield's rights either to cancel or return all or any part thereof where the Goods are found to be defective or not in accordance with the Contract, Order and Specification.

5.2 The Supplier shall promptly keep Upfield informed of any matter of which it is or reasonably should, as supplier of the Goods, be aware relating to the storage, transportation, handling, assembly or use of the Goods by Upfield.

5.3 The Goods shall be at the risk of the Supplier until they are delivered in accordance with the Contract when title to and risk in the Goods shall pass to Upfield, provided that if Upfield pays for the Goods prior to delivery, title to the Goods shall pass to Upfield when payment is made.

## **6 SUPPLY OF SERVICES**

6.1 The Supplier shall from the date set in the Order and for the duration of the Contract provide the Services to Upfield in accordance with the terms of the Contract.

6.2 The Supplier shall meet, and time is of the essence as to, any performance dates specified in the Contract, provided that if no performance dates are so specified the Supplier shall perform the Services within a reasonable time.

6.3 In supplying the Services, the Supplier undertakes, represents and warrants to Upfield that the Supplier shall:

- (a) perform the Services with the highest level of care, skill and diligence in accordance with Good Industry Practice;
- (b) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification and that the Deliverables shall be fit for any purpose that Upfield expressly or impliedly makes known to the Supplier;
- (c) in accordance with (or to exceed) any Service Levels specified in the Order;
- (d) ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Upfield will be free from defects in workmanship, installation and design; and
- (e) provide all equipment, tools, vehicles and such other items as are required to provide the Services.

## **7 EQUIPMENT**

7.1 Title in and ownership of any Equipment shall remain vested in Upfield and shall not at any time pass to the Supplier;

7.2 The Supplier shall:

- (a) store the Equipment securely and separately from all other equipment, plant and materials held by the Supplier so that it remains readily identifiable as Upfield's property;
- (b) not move, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) give Upfield such information about the Equipment as Upfield may reasonably request from time to time
- (d) maintain the Equipment in satisfactory condition;
- (e) notify the company immediately in the event that it undergoes any of the events listed at Condition 17.1(b); and
- (f) grant access to any premises where the Equipment is being stored to enable Upfield to exercise its rights under Condition 7.3 and to verify that the Supplier is complying with the provisions of this Condition 7.2.

7.3 Upfield shall be entitled at any time to recover the Equipment from the Supplier.

7.4 Risk in the Equipment shall pass to the Supplier upon collection of the Equipment from Upfield or upon delivery of the Equipment to the Supplier by Upfield (as appropriate).

7.5 The Supplier shall be responsible for ensuring that the Equipment is fit for use in the performance of the Services and shall not be entitled to any relief from its obligations and/or any compensation under this Contract arising from the use of the Equipment for the performance of the Services where the Equipment is not fit for use.

## **8 COMPANY'S OBLIGATIONS**

8.1 Upfield shall:

- (a) provide the Supplier with reasonable access at reasonable times to Upfield's premises for the purpose of providing Services and shall inform the Supplier of all health, safety and security requirements that apply at Upfield's premises; and
- (b) provide such necessary information for the provision of Services as the Supplier may reasonably request.

## **9 PRICES AND PAYMENT**

9.1 The price of the Goods and/or Services shall be stated in the Order. The price shall be inclusive of all packaging, packing, labelling, export or import or other customs duties taxes or licences, insurance and delivery costs and all other costs incurred by the Supplier unless otherwise specified in the Order.

9.2 All sums payable under the Contract are exclusive of all sales taxes or value added tax which shall be added if appropriate at the rate prevailing at the relevant tax point but inclusive of any other applicable tax or duty payable upon such sums.

9.3 Provided always that the Supplier:

- (a) obtains the written approval of Upfield before incurring any Expense exceeding five hundred euro (500€); and
- (b) invoices Upfield for the relevant Expenses in accordance with Condition 9.4 below,

then Upfield shall reimburse the Supplier for any Expenses which the Supplier has incurred in accordance with the Expenses Policy.

9.4 The Supplier shall submit itemised invoices for the price of Services and any Expenses setting out:

- (a) Upfield's purchase order number or reference number (where available);
- (b) a description of the Services performed; and
- (c) full details of any Expenses, along with such receipts or other relevant evidence of payment as is reasonably required by Upfield to verify the Expenses claimed.

9.5 Unless expressly agreed in writing by Upfield:

- (a) Upfield shall not be liable to pay or refund any other costs or disbursements incurred by the Supplier in relation to Services; and
- (b) the Supplier shall not be entitled to charge commission, mark-up, handling charge or any similar charge on any third party costs or disbursements.

9.6 The Supplier may only invoice Upfield on or after delivery of the Goods or completion of the performance of the Services and invoices submitted early shall be deemed received on the date of delivery of the Goods or date of completion of the performance of the Services. Invoices shall be in such form as Upfield specifies from time to time and shall be addressed to the address for Upfield set out in the Contract.

9.7 All sums payable under the Contract shall be invoiced to Upfield in such currency as is stated in the Order. Where no currency is stated in the Order, all sums payable shall be invoiced in Euros (€).

9.8 Unless otherwise stated in the Order, Upfield shall pay the price of the Goods and/or Services within one hundred and twenty (120) days of the date of receipt by Upfield of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

9.9 If Upfield fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of HSBC Bank plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This Condition shall not apply to payments that Upfield disputes in good faith.

9.10 The prices charged by the Supplier to Upfield shall not exceed those prices charged by the Supplier to any other customer purchasing the same or similar goods and/or services in the same or smaller quantities and Upfield shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.

9.11 If the price is stated in the Order or otherwise agreed between the parties to be on a "time and materials" or "cost plus" basis or similar the Supplier shall give Upfield access to all documents and information in the Supplier's possession or under its control to enable Upfield to satisfy itself that the amount charged by the Supplier is properly and correctly charged in accordance with the Contract.

9.12 If any sums are due to Upfield from the Supplier, then Upfield shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from Upfield under or in relation to this or any other Contract. The Supplier shall not be entitled to apply any amount due to Upfield under the Contract in or towards payment of any sum owing by Upfield to the Supplier in relation to any matter whatsoever.

## **10 AUDIT**

10.1 Upfield shall have the right at any time conduct at the Suppliers or its subcontractors' premises an audit of the Supplier's operations, facilities and procedures to ensure that the Supplier has the appropriate operations, facilities, and procedures, to perform each Contract in accordance with its terms and for that purpose Upfield and its authorised representatives shall be entitled to have access to the Supplier's and its subcontractors' premises during normal working hours on giving reasonable notice to the Supplier.

## **11 REMEDIES**

11.1 Where there is any breach of the Supplier's warranties in or Condition 3.1 (Supply of Goods) or Condition 6 (Supply of Services) or if any obligation, warranty or requirement imposed by, given or stated in the Contract in respect of the Goods and/or Services is not complied with, Upfield shall be entitled at its sole discretion without liability to the Supplier (arising out of such action) and without prejudice to any other right or remedy Upfield may have to take one or

more of the following actions to:

- (a) cancel the Contract and treat the Contract as having never been entered into by the Supplier;
- (b) reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods;
- (c) recover from the Supplier any costs reasonably incurred by Upfield in obtaining substitute goods and / or services from another supplier;
- (d) require the Supplier at its sole cost to replace or repair the Goods within fourteen (14) days;
- (e) require the Supplier at its sole cost to re-execute the Services within seven (7) days; and/or
- (f) delay payment of the price for the Goods and/or Services until the requirements of this Contract, Order and any Specification are entirely fulfilled.

11.2 If Upfield claims that an Order has not been correctly fulfilled the Supplier shall be deemed to accept the validity of the claim unless it serves written notice on Upfield disputing the said claim and stating the reasons for its dispute within seven (7) days of the date of the said claim.

11.3 If Upfield exercises any right under these Conditions Upfield may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.

11.4 Upfield's rights under these Conditions are in addition to any statutory remedies available to Upfield.

## **12 PRODUCT RECALL**

12.1 The Supplier shall immediately notify Upfield in writing providing all relevant details if it discovers that there is:

- (a) any defect in the Goods which have been delivered to Upfield at any time; or
- (b) any error or omission in the instructions for the use of the Goods, which causes or may cause any risk of death, injury or damage to property.

12.2 Upfield may at its discretion and at the Supplier's own cost:

- (a) recall any Goods or any other products into which the Goods have been incorporated already sold by Upfield to its customers (whether for a refund, credit or replacement which shall, where required by Upfield be undertaken by the Supplier at Upfield's option); and/or
- (b) issue any notification whether in writing or otherwise to its customers about the manner of use or operation of any Goods or any other products into which the Goods have been incorporated already sold by Upfield to its customers,

in each case on the basis of the identification whether by Upfield, its customers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use which Upfield reasonably concludes affects or may affect any of the Goods supplied and which causes or may cause any risk of death, injury or damage to property.

12.3 Except with the prior written consent of Upfield, the Supplier shall not make any public statement about any product recall made under this Condition 12 or otherwise in relation to the Contract or the relationship of the parties.

## **13 INDEMNITY**

13.1 In addition to any other remedy available to Upfield, the Supplier shall indemnify, defend and hold harmless Upfield, Upfield's Group and their respective directors, officers and employees in full and on demand, from and against any and all liabilities, claims, demands, damages, losses or expenses (including reasonable legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) any claim made against Upfield by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Upfield by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against Upfield 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 Goods, or receipt, use or supply of the Services or any of the Deliverables.

13.2 The Supplier shall provide all facilities, assistance and advice required by Upfield or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, the Contract.

## **14 INTELLECTUAL PROPERTY**

14.1 All materials including any Specifications supplied by Upfield, and any copies made by or for the Supplier shall be the property of Upfield, shall only be used for the purposes of this Contract and shall be treated by the Supplier as

strictly confidential.

14.2 Any and all Intellectual Property Rights created or acquired in the course of or as a result of any work carried out by the Supplier under or in pursuance of the Contract, whether in the Goods, Services, Deliverables accompanying documents or otherwise shall, from the date of their creation or acquisition by the Supplier and otherwise promptly upon request by Upfield, belong exclusively, throughout the world, to Upfield.

14.3 The Supplier shall grant or procure the grant of an adequate licence or sub-licence to Upfield at no extra cost, of any Intellectual Property Rights which the Supplier does not own, incorporated or utilised in any work done by the Supplier for Upfield, or Goods or Services or Deliverables provided, in pursuance of the Contract sufficient to enable Upfield to make full use of such work, Goods or Services and to repair, update or maintain the work, Services and Deliverables in which such results are incorporated.

14.4 The Supplier hereby agrees and undertakes promptly at the request of Upfield, but at its own cost, to do all such acts or deeds and execute all such documents as may be required by Upfield to give effect to the provisions and intentions of this Condition 14.

## **15 INSURANCE**

15.1 The Supplier shall at its own cost keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract. The Supplier shall on the written request of Upfield provide Upfield with details of the insurance maintained in force in accordance with this Condition. The Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Condition.

## **16 COMPLIANCE**

16.1 The Supplier shall at all times:

- (a) perform its obligations under each Contract in compliance with all Applicable Laws, relevant technical, professional or other applicable standards;
- (b) comply with the Upfield Policies and Procedures (including without limitation any Supplier guidelines concerning responsible sourcing and supply chain management);
- (c) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract; and
- (d) not do or omit to do anything which may cause Upfield to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Upfield may rely or act upon any Services supplied by the Supplier.

## **16.2 Data Protection**

To the extent that a party receives Personal Data from the other party in relation to any Contract made pursuant to these Conditions, each party acknowledges that it acts as a Data Controller in respect of any Personal Data which it receives and which is processed pursuant to the Contract. Each party undertakes to the other that in processing such Personal Data it will comply with all Data Protection Laws. At any time, should Upfield deem it necessary, the parties shall enter into a Data Processing Agreement in respect of any Personal Data pursuant to the Contract.

## **17 TERMINATION**

17.1 Either party shall be entitled to immediately terminate the Contract by giving notice in writing to the other party if:

- (a) the other party commits a material breach of any of its obligations under the Contract which is incapable of remedy;
- (b) the other party commits a breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after thirty (30) days of having been required in writing to remedy or desist;
- (c) the other party becomes or is reasonably likely to become insolvent, enters into bankruptcy, individual voluntary arrangement, liquidation, winding up, receivership or administrative receivership, administration, a corporate voluntary arrangement or compromises any debts with creditors or has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 17.1(c) and/or
- (d) the other party ceases, or appears in the reasonable opinion of the party seeking to terminate, likely or is threatening to cease, to carry on all or a substantial part of its business.

## **18 CONSEQUENCES OF TERMINATION**

18.1 The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

18.2 Upon termination of the Contract for any reason whatsoever:

- (a) subject to Condition 18.1 above, the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Condition 18;
- (b) the Supplier shall immediately deliver to Upfield all Deliverables whether or not then complete, and return all materials supplied to the Supplier, including any copies.
- (c) the Supplier shall, if so requested by Upfield, provide all assistance reasonably required by Upfield to facilitate the smooth transition of the

- Services to Upfield or any New Supplier appointed by it; and
- (d) any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;

## **19 NO EMPLOYEE TRANSFER**

19.1 It is the parties' intention that neither the commencement nor the termination of the Contract or of any of the Services will give rise to a transfer of any employee from one person to another whether from or to the Supplier or its subcontractors, or from or to Upfield (or any member of the Upfield Group)'s subcontractors.

## **20 CONFIDENTIALITY**

20.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the other party.

## **21 GENERAL**

21.1 The Contract is personal to the Supplier. The Supplier shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of Upfield.

21.2 If requested by Upfield, the Supplier shall purchase components and/or services that are required to produce the Goods and/or Services and/or Deliverables comprising the Order from third party suppliers that have been nominated by Upfield. Upfield may negotiate agreed prices with such third party suppliers but the Supplier acknowledges and agrees that it shall be solely responsible for contracting with, and paying such third party suppliers.

21.3 Upfield may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract at any time without the prior written consent of the Supplier.

21.4 Subject to Condition 21.5, a person who is not a party to the Contract has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Contract.

21.5 All members of Upfield's Group may enforce the provisions of the Contract subject to and in accordance with Condition 21.6 and the provisions of the Contracts (Rights of Third Parties) Act 1999.

21.6 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.

21.7 Neither party shall pledge the credit of the other party nor represent itself as being the other party nor an agent, partner, employee or representative of the other party and no party shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other party. Nothing in the Contract and no action taken by the parties pursuant to the Contract creates, or is deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

21.8 The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods and/or Deliverables, any materials relating to the Services or any other property of Upfield in the Supplier's possession, in respect of any sums owed by Upfield to the Supplier under the Contract or otherwise.

21.9 Entire Agreement

- (a) The Contract contains the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter.
- (b) The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Contract.
- (c) Each party agrees that the only rights and remedies available to it arising out of, or in connection, with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.

21.10 Severability of Provisions

If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

21.11 Waiver

The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Contract shall be in writing. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of

that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

21.12 Variation

No purported alteration or variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.

21.13 Notices

- (a) Any notices sent under the Contract must be in writing. Notice by email is deemed to be in writing.
- (b) Notices may be served by personal delivery, prepaid recorded delivery service or email to the relevant party's registered office or at such other address as the relevant party may give for the purpose of service of notices under the Contract.

## **22 DISPUTE RESOLUTION PROCEDURE**

22.1 If a dispute arises out of or in connection with the Conditions or any Contract or the performance, validity or enforceability of either of them, then the parties shall attempt in good faith to resolve the dispute by escalating the issue internally via their respective account managers; and then their respective Procurement Directors (or equivalent); and then their respective CFOs / COOs. At each level of escalation, the parties involved shall use all reasonable endeavours to resolve the dispute.

22.2 If, following escalation through each of the levels set out in Condition 22.1, the parties fail to resolve the dispute then the parties may refer the matter for legal proceedings under the jurisdiction of the courts.

## **23 LAW AND JURISDICTION**

23.1 The Contract, these Conditions and any issues, disputes or claims arising out of, or in connection with either of them (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with the laws of the country in which Upfield (as defined above) is registered.

23.2 Subject to first complying with Condition 22 (Dispute Resolution Procedure), all disputes or claims arising out of or relating to the Contract and/or these Conditions shall be subject to the exclusive jurisdiction of the courts of the country in which Upfield (as defined above) is registered to which the parties irrevocably submit.