

## Ocado Retail Limited ("Ocado")

### Conditions of Purchase

#### 1. Introduction

- 1.1 This document comprises the Ocado standard terms and conditions applying to the purchase of Goods for resale.
- 1.2 These Conditions apply to all legal Contracts which Ocado enters into for the purchase of Goods for resale including the development of Ocado Brand Goods. Normally, Ocado buys Goods by way of individual Order and there is no long-term contractual commitment by it or its Suppliers. In those cases, these Conditions apply to Contracts for individual Orders.
- 1.3 It is the Supplier's responsibility to familiarise itself with these Conditions and any associated terms and conditions and manuals which relate to the trading agreement it has with Ocado.
- 1.4 Neither party shall have any liability under or be deemed to be in breach of a Contract as a result of any delays or failures in performance which result from circumstances beyond the reasonable control of that party. The party affected by the relevant circumstances will promptly notify the other party in Writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a specified continuous period either party may terminate the Contract by written notice to the other party.
- 1.5 Ocado reserves the right to amend any aspect of these Conditions at reasonable notice.
- 1.6 Additional terms and conditions which relate to individual buying, product or geographical area requirements will be communicated directly to specific Suppliers as appropriate.

#### 2. Application of Terms

- 2.1 A Contract shall arise, subject to any express written arrangements between Ocado and the Supplier, if the Supplier accepts an Order from Ocado:
  - (a) expressly by indicating acceptance; or
  - (b) automatically by virtue of a commitment from the Supplier to fulfil certain Orders; or
  - (c) where neither (a) nor (b) apply, implied by fulfilling the Order.
- 2.2 An Order may be withdrawn at any time prior to acceptance.
- 2.3 Every Contract shall consist of these Conditions, the Ocado Supplier Manual, the relevant Order and any other terms and conditions which Ocado and the Supplier expressly agree in Writing.

- 2.4 Any terms or conditions of the Supplier, and/or variations to these Conditions or to any of the documents referred to within them shall only be effective if agreed by Ocado and made in Writing.
- 2.5 It is the responsibility of the Supplier to bring to the attention of its commercial contact at Ocado any of the terms or conditions of these Conditions with which it takes issue.
- 2.6 The Code is hereby incorporated into all Contracts for the supply of Groceries for resale in the United Kingdom. Any provision of a Contract that conflicts with the Code is unenforceable.

### 3. Definitions

In these Conditions the following words shall have the following meanings:

<b>"CAP Code"</b>	The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing
<b>"CFC"</b>	an Ocado distribution centre called a 'Customer Fulfilment Centre'
<b>"Conditions"</b>	the terms and conditions set out in this document, and other documents referred to in it
<b>"Confidential Information"</b>	includes, but is not limited to: (a) all technical or commercial know-how, specifications, designs, inventions, processes or initiatives which have been disclosed to the Supplier by Ocado or its agents and (b) any other information concerning Ocado's business or its products which the Supplier may obtain
<b>"Code"</b>	the Groceries Supply Code of Practice
<b>"Contract"</b>	all arrangements agreed between Ocado and the Supplier, whether in writing or orally, relating to the supply of Goods pursuant to and including these Conditions the terms contained in the Ocado Supplier Manual, Ocado Labelling Manual if applicable and any terms notified in or through Olive
<b>"Goods"</b>	the goods (including part or parts of them) identified under the Order by Ocado for purchase from the Supplier;
<b>"Groceries"</b>	has the definition as given in the GSCOP Order
<b>"GSCOP Order"</b>	the Groceries (Supply Chain Practices) Market Investigation Order 2009

<b>“Debit Note”</b>	A notice provided to the Supplier confirming that Ocado intend to deduct sums owed to it from payments owing to the Supplier
<b>"Intellectual Property Rights"</b>	all intellectual and industrial property, any invention, patent, design, copyright, trade marks, database rights, commercial or Confidential Information, knowhow or trade secrets, and any other rights of a similar nature whether or not the same is registered, and the right to apply for any of them
<b>"Manufacturer's Brand Goods"</b>	products which carry the brand name of the manufacturer
<b>"Ocado"</b>	Ocado Retail Limited, a company registered in England and Wales (registered number 3875000) whose registered office is at Apollo Court, 2 Bishop Square, Hatfield Business Park, Hatfield, Hertfordshire, AL10 9EX and its authorised representatives and agents
<b>"Ocado Brand Goods"</b>	products carrying the Ocado brand label and/or logo and identify the product as produced on behalf of Ocado Limited, or products sold loose without label or brand identification
<b>“Ocado Labelling Manual”</b>	the document entitled Ocado Labelling Manual given to the Supplier or is available on request which sets out Ocado's requirements in relation to supplying Goods to Ocado and may be amended by Ocado from time to time
<b>"Ocado Supplier Manual"</b>	the document entitled Supplier Manual given to the Supplier or is available on request which sets out Ocado's requirements in relation to supplying Goods to Ocado and may be amended by Ocado from time to time
<b>"Order"</b>	Ocado's offer to the Supplier to supply of Goods pursuant to the terms of the Contract, given by a person authorised by Ocado
<b>“Olive”</b>	the online portal access to which is provided by Ocado allowing the Supplier access information relation to the supply of Goods
<b>“Related Trade Terms”</b>	terms relating to volumes, discounts, rebates, bonuses, trigger payments, overrides and such similar support payments, including payment terms (if applicable)

<b>"Sourcing Partner"</b>	an entity that assists Ocado in the negotiation and entry into of supply commitments with certain Suppliers
<b>"Supplier"</b>	the person, firm or company who accepts Ocado's Order in accordance with clause 4 and for the avoidance of doubt includes Marks and Spencer PLC
<b>"Supply Chain Team Member"</b>	the person in the Ocado Supply Chain Team who deals with the Supplier, or a person authorised by Ocado to place Orders for the Goods with the Supplier;
<b>"Trading Team Member"</b>	the person in the Ocado Trading Team who deals with the Supplier, or a person authorised by Ocado to negotiate with the Supplier in relation to the Goods;
<b>"Writing"</b>	communication by writing, fax, e-mail, electronic data interchange (EDI), via Olive or letter.

#### 4. **Ordering & Forecasting**

- 4.1 Suppliers will accept Orders from Ocado by an agreed method from the options offered.
- 4.2 Ocado reserves the right to withdraw a confirmed Order on reasonable notice.
- 4.3 Ocado will provide non-binding forecasts and provisional orders in good faith and prepared with due care. Such forecasts are likely to be based on previous performance of a product or similar product and take into account the current Ocado selling assortment and current customer trends but Ocado is not responsible for any costs incurred by the Supplier relating to anything except a confirmed Order.
- 4.4 Forecasts shall not constitute Orders and shall be subject to variation by Ocado.
- 4.5 The Supplier accepts that it is not entitled to compensation, damages or any other sum as a result of any forecast provided by Ocado.

#### 5. **Delivery**

- 5.1 The Supplier shall, at its cost (including insurance), deliver the Goods to a place and at a date and time specified by Ocado.
- 5.2 The Supplier shall comply with the procedures and requirements for delivery to Ocado's CFCs as detailed in the Ocado Supplier Manual.
- 5.3 Delivery to Ocado shall take place when the Goods are completely offloaded at the place of delivery, or if a special arrangement has been made for the Goods to be collected from the Supplier by Ocado, at the point of collection (as the case may be).
- 5.4 Without prejudice to its other rights, Ocado may:
  - (a) reject any Goods which are not delivered in accordance with the Contract; and/or

- (b) charge a fee (which shall include an administration fee) which shall be paid by the Supplier in respect of a failure to comply with the delivery or other standards set out in the Supplier Manual. The charges that Ocado may levy are set out in Appendix C of the same.

## 6. Insurance

6.1 The Supplier shall take out, maintain and not invalidate during and for 6 years following termination of these Conditions, the following types of insurance policies, for the specified amounts, with a reputable insurance company and on terms that are reasonably adequate and customary in the insurance market in England:

- (a) employer's liability insurance as required by relevant law;
- (b) public and products liability insurance including cover for bodily injury and property damage arising in connection with these Conditions, including as a result of the acts or omissions of the Supplier, Supplier personnel and/or contractors, for an insured amount of not less than £5,000,000 (five million pounds) per occurrence and unlimited in respect of the number of occurrences covered by such insurance during any one insurance period; and
- (c) such other insurance as may be relevant to the risks associated with these Conditions.

6.2 The Supplier shall procure that the public and products liability insurance to be maintained by the Supplier shall contain an indemnity to principals clause under which Ocado shall be indemnified under such insurances in respect of claims made against Ocado and which arise from the supply by the Supplier of the Goods.

6.3 Ocado may at any time require the Supplier to provide any reasonable documents and/or information relating to any insurance policy including certificates of insurance and receipts or other evidence of premiums paid. If the Supplier does not provide such documentation then Ocado may procure the insurance on the Supplier's behalf and at the Supplier's cost. The Supplier authorises Ocado to act on its behalf for this purpose.

## 7. Invoicing

7.1 The Supplier shall raise invoices promptly, in relation to quantities actually delivered and in accordance with the procedure set out in the Ocado Supplier Manual.

7.2 The Supplier shall resolve any invoice queries promptly.

7.3 The Supplier must provide Ocado with reasonable notice if there is to be a change to the identity of the company invoicing for Goods. Failure to do so may result in a delay in payment for such Goods.

## 8. Risk and Ownership

8.1 Unless otherwise expressly agreed by Ocado in Writing

- (a) ownership of and title to the Goods shall pass to Ocado upon their delivery to Ocado or if earlier, upon collection by Ocado of the Goods irrespective of any purported retention of title claimed by the Supplier; and
- (b) the full responsibility and risk for the Goods shall pass to Ocado on delivery or collection of the Goods.

**9. Price and Product details**

- 9.1 The price of the Goods and Related Trade Terms, not including payment terms (which are set out in clause 10, below), shall be agreed, prior to the Supplier accepting the Order, by the Ocado Trading Team Member and the Supplier.
- 9.2 Where Goods are supplied to Ocado with supply having been arranged by the Sourcing Partner, the price of the Goods and Related Trade Terms, shall be on no worse terms than have been agreed between the Sourcing Partner and the Supplier in respect of the supply of those Goods to the Sourcing Partner.
- 9.3 Where Goods are supplied to Ocado with supply having been arranged by the Sourcing Partner, Goods supplied to Ocado shall be aggregated with all goods supplied to the Sourcing Partner, for the purposes of calculating Related Trade Terms.
- 9.4 Any amounts payable to Ocado pursuant to clause 9.2 (as calculated on a pro rata basis of the aggregated volume of goods provided to Ocado and to the Sourcing Partner) shall be made either by making payment directly to Ocado, or to the Sourcing Partner, at Ocado's discretion.
- 9.5 Where Goods are supplied to Ocado without supply having been arranged by the Sourcing Partner, all Related Trade Terms will be agreed directly between Ocado and the Supplier and paid directly to Ocado.
- 9.6 Suppliers of Ocado Brand Goods shall comply with the Ocado Labelling Manual.
- 9.7 All product details which have a direct effect on the ability of Ocado to order, take delivery or sell that product shall be as agreed, by the Ocado Trading Team Member and the Supplier, prior to the Supplier accepting the Order.
- 9.8 Goods which are delivered to Ocado otherwise than in accordance with an Order may be rejected by Ocado and/or Ocado may charge the Supplier a fee in accordance with and as set out in Appendix C of the Ocado Supplier Manual.
- 9.9 Subject to the Code, Ocado may ask the Supplier make payments towards Ocado's costs of:
  - (a) visiting the Supplier's premises;
  - (b) artwork and/or packaging design;
  - (c) consumer or market research;
  - (d) the opening or refurbishing of a store; or

- (e) hospitality.

## 10. **Payment**

- 10.1 Payment terms shall be 60 days from receipt of invoice or as otherwise agreed in Writing by the Trading Team Member. The invoicing procedure set out in the Ocado Supplier Manual must be followed.
- 10.2 Without prejudice to any other right or remedy, Ocado reserves the right to set off any amount owing from the Supplier to Ocado against any amount payable by Ocado to the Supplier under any contract.
- 10.3 Invoices raised by Ocado are for immediate settlement and will be deducted from the next payment to the Supplier.
- 10.4 Any dispute, challenge or other claim that an invoice or Debit Note raised by Ocado is not due or payable or dispute, challenge or other claim that sums due pursuant to any invoice or Debit Note may not be deducted from the next payment to the Supplier must be raised within 30 days of Ocado issuing an invoice or Debit Note. In the event the Supplier does not dispute the validity of any invoice or Debit Note raised by Ocado or object to Ocado off-setting sums owed to it against payments owed to the Supplier within 30 days of the Invoice or Debit Note being issued, the Supplier will be deemed to accept the validity of the Invoice or Debit Note and confirms it may be deducted from sums owing to the Supplier and the Supplier waives any rights whatsoever to seek the repayment of any sums deducted.
- 10.5 In the event of late payment, the Supplier shall write to Ocado advising it that payment is overdue.
- 10.6 If Ocado fails to pay any amount payable by it within 30 days of receiving notice from the Supplier that payment is overdue, the Supplier shall be entitled to charge a set rate of interest on that sum up to the date of payment, that rate to be 4% per annum above the Bank of England base rate at the due date of payment. The Supplier acknowledges that this is a substantial remedy for the Late Payment of Commercial Debts Act 1998 (as amended).

## 11. **Nature and Quality of the Goods**

- 11.1 The Supplier warrants that at the time of delivery the Goods shall:
  - (a) comply with any specification agreed with Ocado and any instructions given by Ocado (which includes the company and site of manufacture of the Goods - subcontracting is permissible only by specific agreement)
  - (b) be fit for all intended purposes and reasonably foreseeable uses to which products of that nature can be used (including, in the case of food products, fit for human consumption and/or use (as relevant) and free from contamination, objectionable odours or tastes);
  - (c) comply in all respects with:

- (i) the Order and
  - (ii) any other technical documents or data, supplied or advised by Ocado to the Supplier in connection with the Goods, including the Ocado Supplier Manual and
  - (iii) any production sample approved by Ocado.
- (d) comply with all the requirements of:
- (i) all legislation in the United Kingdom and European Union applicable to the Goods (including adequate labelling in English unless agreed otherwise) and to the Supplier's methods of production; and
  - (ii) recognised good manufacturing practice, codes of practice or good husbandry, as appropriate.

## 12. Remedies and Disposal of Goods

- 12.1 Without prejudice to any other right or remedy which Ocado may have, if any Goods supplied are not in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, Ocado shall be entitled to:
- (a) reject the Goods (in whole or in part); and/or
  - (b) serve notice in Writing requiring the Supplier to collect the Goods within 72 hours and destroy the Goods if the Goods are not collected within that period, or any other period agreed in Writing; and/or
  - (c) destroy the Goods at the Supplier's cost; and/or
  - (d) a full refund for the rejected Goods together with compensation for any loss of profit and other direct, indirect loss and expense incurred by Ocado; and/or
  - (e) inform the Supplier of the defect, and upon notification the Supplier shall take such action as necessary to ensure conformity or replace the Goods in whole or in part.
- 12.2 Ocado shall only be deemed to have accepted the Goods, in whole or in part, following a reasonable chance to inspect the Goods, and the Supplier agrees that:
- (a) it is unreasonable to expect Ocado to inspect individual items; and
  - (b) with regard to defects which are not immediately and obviously apparent upon delivery, the chance of reasonable inspection shall only take place after the Goods have been opened, which may be after specific items of the Goods have been sold.
- 12.3 Ocado shall also have the right to reject Goods even if such Goods have previously been accepted and/or paid for if a latent defect is subsequently identified.



- 12.4 Goods which form part of a consignment which has been rejected pursuant to clauses 12.1 to 12.3 above, may be redelivered only subject to the express written authority of Ocado.
- 12.5 Ocado Brand Goods which are fit for human consumption or safe to use but which are, in Ocado's opinion, otherwise not of merchandisable quality or which Ocado has decided not to sell, may be disposed of at Ocado's sole discretion. Under no circumstances may any Goods bearing any reference to Ocado be released by the Supplier to any organisation (including internally to the Supplier's own staff) other than Ocado unless with the Written authority of Ocado.

**13. Traceability and Recall**

- 13.1 The Supplier shall fulfil its legal obligations in operating a system to ensure the efficient tracing, withdrawal and recall of Goods and shall:
- (a) identify to Ocado the key procedures in place and personnel responsible for product withdrawal or recall; and
  - (b) carry out tests of the traceability system in order to verify its effectiveness.
- 13.2 Save where responsibility for the event necessitating each withdrawal or recall is attributed to Ocado, Ocado reserves the right to charge Suppliers a fee in relation to the administration of the withdrawal or recall of their products. Details of Supplier charges made for withdrawals and recalls are set out in the Ocado Charging Policy at Appendix C of the Ocado Supplier Manual, as amended from time to time.
- 13.3 Except in the case of emergency Ocado and the Supplier will:
- (a) agree the content of any product recall notice sent to customers of Ocado; and
  - (b) consult with each other with regard to the recall of the Supplier's products from Ocado's customers,
- provided that the final decision as to any press or public announcement and/or communication to Ocado customers and the timing of notices is that of Ocado.
- 13.4 Without prejudice to Ocado's other rights under the Contract and the Supplier's other obligations under the Contract, in circumstances of a recall, the Supplier shall at its own cost:
- (a) provide Ocado with all reasonable assistance in locating and recovering the Goods subject to the recall and in preparing any required reports;
  - (b) provide Ocado with copies of any communications it has received from any governmental agency, entity or authority; and
  - (c) destroy all recalled Goods provided to Ocado under the Contract in compliance with all applicable legislation and Ocado's reasonable instructions (unless Ocado exercises its rights to destroy the Goods in accordance with clause 12 above).

## 14. Ethical and Responsible Sourcing and Production

14.1 The Supplier shall:

- (a) maintain a complete set of records to trace the supply chain of all Goods provided to Ocado in connection with the Contract; and
- (b) cooperate and conform with such site audits and product testing procedures as are appropriate to the Goods and required by Ocado and permit Ocado and its third party representatives, on reasonable notice during normal business hours (but without notice in case of any reasonably suspected breach of its obligations under these Conditions including but not limited to breach of clause 23) to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under the Contract.
- (c) carry out audits to a standard required by Ocado as specified by the appropriate standard or technical policy;
- (d) disclose all audit reports to Ocado. Details of any fees applicable for audits are outlined in Appendix C of the Supplier Manual and may be added or altered at Ocado's discretion.

14.2 Suppliers of Ocado Brand Goods shall comply with the requirements of the Ocado Responsible Sourcing Code of Practice & Environmental Impact, set out in the Ocado Supplier Manual.

14.3 Suppliers of Manufacturer's Brand Goods must comply with the Ocado Responsible Sourcing Code of Practice & Environmental Impact set out in the Supplier Manual or as a minimum, have in place their own equivalent code and audit programme which shall be substantially similar to Ocado's Responsible Sourcing Code of Practice & Environmental Impact.

14.4 A Supplier must immediately notify Ocado if it believes or knows that its products do not comply with the Ocado's Responsible Sourcing Code of Practice & Environmental Impact.

## 15. Labelling, Packaging and Advertising

15.1 The design of the labelling and packaging of retail packs of Ocado Brand Goods is the responsibility of Ocado. The Supplier shall ensure that information for Ocado Brand Goods is provided in line with the Ocado Labelling Manual and in respect of composition, quality, or any other aspect of the specification of the Goods such information shall be, to the Supplier's best knowledge and endeavours, accurate and up to date.

15.2 The product information provided by any Supplier constitutes an agreement by the Supplier to provide the Goods to that specification. Ocado reserves the right to refuse a delivery or make appropriate charges where Goods delivered are not as agreed between the Supplier and Ocado.

- 15.3 Suppliers of Ocado Brand Goods shall not, without the specific approval of Ocado, make any changes to the information set out in the product specification, once it has been agreed by Ocado and the Supplier; nor shall any Supplier make any changes to any other information in respect of such Goods, after having approved the copy and artwork used in labelling and packaging of the Goods.
- 15.4 Without prejudice to Ocado's other rights, the Supplier agrees to indemnify Ocado on demand against any and all costs incurred as a result of any unauthorised changes detailed in clauses 15.1 to 15.3 above. This specifically includes any design, artwork or reprographics costs incurred by Ocado or its contractors as a result of amendments to specifications, technical artwork or proofs which are made by the Supplier after the accuracy of the relevant document has been confirmed by the Supplier. Ocado reserves the right to charge a Supplier an amount in respect of any additional work made necessary by any action, error or omission of the Supplier, particularly with regard to the approval of documents during the designing of new products or packaging.
- 15.5 The Supplier must provide Ocado with samples of the Goods during the proposal process, as requested by Ocado. The Supplier acknowledges that untimely provision of these samples may delay the agreed launch date.
- 15.6 The Supplier acknowledges that Ocado requires an electronic image and labelling information in accordance with the Supplier Manual for all Goods it sells.
- 15.7 The Supplier acknowledges that the labelling information shall be relied upon by Ocado and displayed on its website for the benefit of its customers and accordingly the Supplier warrants that the labelling information shall be true and accurate in all respects, comply with all applicable legislation and none of the labelling information shall be misleading, whether by inclusion of misleading information or omission of material information, or both.
- 15.8 The Supplier shall supply to Ocado, and comply with, the labelling and packaging requirements for retail units of the Goods as provided for in the Ocado Supplier Manual, or as otherwise indicated in Writing, including (without limitation) specific labelling information that is required under legislation or otherwise (the "labelling information").
- 15.9 The Supplier agrees that Ocado may advertise the Goods as Ocado sees fit using either the electronic images provided by the Supplier or using an image created by Ocado or a reputable third party.
- 15.10 Where the Supplier provides Ocado with wording or images to be included in advertisements for the Goods, the Supplier warrants that such wording or images shall comply with the CAP Code and all UK legislation.
- 15.11 The Supplier shall hold harmless and indemnify Ocado against any breach of clause 15.10 above.
- 15.12 If the Supplier is a Supplier of service counter Goods to Ocado, the Supplier agrees that any and all changes to the labelling information in respect of such Goods must be immediately notified by the Supplier to the manual service counter back-of- pack

dedicated email address which is MSCBOP@ocado.com and copied to the regular trading manager contact at Ocado as soon as the Supplier becomes aware of a change, regardless of its nature. A failure to do so by the Supplier will be considered a breach of this Contract.

15.13 Subject to further advice from the Ocado supply chain team and the essential requirements set out in the Ocado Supplier Manual, the Supplier shall ensure that the bar codes on retail and non-retail (i.e. outer/traded) units of the Goods are set out in accordance with Bar Coding - Getting it Right - available from GS1 UK, 10 Maltravers Street, London WC2R 3BX, Phone: 020 7655 9000, Email: info@gs1uk.org or downloadable from [http://www.gs1uk.org/doc\\_library.asp?fid=86](http://www.gs1uk.org/doc_library.asp?fid=86).

15.14 In the event that a third party alleges that a Supplier's Goods infringe a third party's intellectual property rights, the Supplier agrees and acknowledges that Ocado is entitled to cease to sell such Goods and Ocado shall be released from any obligation, pursuant to an Order or otherwise, to purchase such Goods and that such action is reasonable.

## 16. **Complaints**

16.1 In the event of a customer complaint, Ocado is entitled to charge the Supplier a fee for dealing with that complaint. The amount of the fee is set out in the Ocado Supplier Manual and may be varied from time to time at Ocado's discretion.

## 17. **Indemnity**

17.1 The Supplier shall indemnify Ocado on demand and in full against all and any direct, indirect and/or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred by Ocado, either within or outside the United Kingdom, arising from or in connection with the Supplier's:

- (a) breach of any material terms or conditions of the Contract or its statutory obligations;
- (b) infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- (c) disposal of Ocado Brand Goods to a party other than Ocado or authorised by Ocado, including any disposal to staff within the Supplier's business and any costs Ocado may incur preventing the use or re-sale of Ocado Brand Goods by a third party.

## 18. **Termination**

18.1 Ocado shall have the right to terminate the Contract immediately at any time by giving notice in Writing to the Supplier if:

- (a) the Supplier commits a material breach of any terms of any contract with Ocado;

- (b) a Supplier of Ocado Brand Goods materially fails to meet a requirement of the Ocado product specification any audits or inspections or any Supplier loses its independent accreditation status;
- (c) the financial position of the Supplier deteriorates to such an extent that in the opinion of Ocado the capability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (d) the Supplier is unable to pay its debts within the meaning of the Insolvency Act 1986 or equivalent provision in another jurisdiction;
- (e) any step, action, application or proceeding is taken by or in respect of the Supplier in relation to the whole or part of its undertaking for:
  - (i) a voluntary arrangement or composition or reconstruction of its debts; or
  - (ii) winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy;

in any jurisdiction to which it is subject (including, without limitation, one in which the Supplier is incorporated) which has an effect similar or equivalent to any of the events mentioned above;
- (f) the Supplier ceases or threatens to cease to carry on its business.

18.2 Ocado shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier reasonable notice in Writing. Thereafter all work on the Contract shall be discontinued (as provided by clause 18.4).

18.3 Although the payment terms agreed pursuant to clause 10 above are binding on Ocado, the Supplier shall only have a right to terminate the Contract for late payment where, following a breach of the payment terms, the Supplier has given Ocado at least 14 days' notice of its intention to terminate if payment is not made and payment is not made within that period.

18.4 If the Contract is terminated for whatever reason, the Supplier:

- (a) shall discontinue all work on the Contract; and
- (b) agrees that Ocado may dispose of any Goods that have been delivered as it wishes; and
- (c) shall comply with Ocado's instructions in relation to Goods that have not yet been delivered and are in its possession (whether in the process of manufacture or ready for despatch), to either:
  - (i) destroy the Goods to Ocado's satisfaction; or
  - (ii) remove any reference, mark or name relating to Ocado anywhere on the Goods, labelling or packaging and re-pack the product to Ocado's satisfaction; and

- (d) shall reimburse Ocado for any loss or expenses incurred by Ocado in connection with the Contract.

18.5 The termination of the Contract, for whatever reason, shall:

- (a) not affect the Supplier's rights under the Code or the GSCOP Order;
- (b) be without prejudice to the rights and duties of Ocado accrued prior to termination; and
- (c) not affect any of the Contract's provisions which are intended to have effect after it has come to an end, including without limitation those relating to confidentiality, ownership of rights and any Ocado property held by the Supplier.

## 19. Confidentiality

19.1 The Supplier shall not use, copy or disclose any Confidential Information connected with or arising out of the Contract, except as provided by clause 19.3 below.

19.2 Clause 19.1 shall not apply to information which is:

- (a) generally available to the public, other than as a result of disclosure by the Supplier or its representatives in breach of clause 19.1 above;
- (b) available to the Supplier not arising from this Contract and free of any restriction as to its use or disclosure.

19.3 The Supplier may disclose Confidential Information:

- (a) as may be required by law or any legal or regulatory authority; or
- (b) to its professional representatives or advisers; or
- (c) to its employees, agents, subcontractors and Suppliers who require the information for the purpose of discharging the Supplier's obligations to Ocado.

19.4 With regard to any disclosure under clauses 19.3(b) and (c) above, the Supplier shall ensure that those persons receiving the Confidential Information are subject to like obligations of confidentiality as bind the Supplier.

19.5 Upon termination of the Contract the Supplier shall promptly return to Ocado or, at Ocado's option, destroy, any materials containing Confidential Information which are under its control or possession.

## 20. Ocado Property

20.1 The Supplier agrees that any documents, materials or equipment supplied to it by Ocado shall be used only in accordance with the purpose of this Contract unless otherwise expressly authorised by Ocado in Writing.

20.2 The Supplier agrees that any documents, materials or equipment supplied to it by Ocado shall be held by the Supplier in safe custody at its own risk and maintained and

kept by the Supplier in good condition, and under proper security measures to ensure that no unauthorised disclosure takes place, until they are returned to Ocado at Ocado's request; and shall not be disposed of other than in accordance with Ocado's written instructions.

## 21. **Ownership of Rights**

- 21.1 The Supplier acknowledges that in relation to Ocado Brand Goods, Ocado is the owner of:
- (a) all designs, specifications, recipes and other instructions and materials that Ocado agrees with the Supplier under this Contract; and
  - (b) all Intellectual Property Rights in Ocado Brand Goods.
- 21.2 Other than to enable the Supplier to fulfil its obligations to Ocado, the Supplier shall not acquire any rights in and shall not make any use of Ocado's Intellectual Property Rights.
- 21.3 A Supplier of Ocado Brand Goods may not subcontract its obligations or purport to grant any licence to any third party to use the Intellectual Property Rights in Ocado Brand Goods, without the prior written consent of Ocado.

## 22. **Supplier's Products**

- 22.1 The Supplier shall not source, produce, licence, sell or in any way deal with any products which contain:
- (a) any Confidential Information; or
  - (b) Ocado rights and/or Intellectual Property Rights as referred to above; or
  - (c) any other designs, specifications, recipes, instructions or materials that relate to the product, connected with or arising out of the Contract,
- except to enable the Supplier to fulfil its obligations to Ocado under the Contract, or with prior written agreement from Ocado.
- 22.2 This clause 22 applies for the duration of the Contract, and for up to one year following the termination of the Contract, as required by Ocado.

## 23. **Compliance with laws and policies**

- 23.1 Each party shall:
- 23.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force and relating to:
- (a) anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
  - (b) anti-slavery and human trafficking, including but not limited to the Modern Slavery Act 2015;

- 23.1.2 not engage in any activity, practice or conduct which would constitute an offence:
- (a) under sections 1, 2 or 6 of the Bribery Act 2010; or
  - (b) under sections 1, 2 or 4, of the Modern Slavery Act 2015.
- 23.1.3 have in place throughout the term of the Contract its own policies and procedures, including (but not limited to) adequate procedures in order to ensure compliance with the terms of clauses 23.1.1 and 23.1.2. (the Relevant Requirements).
- 23.2 The parties shall not and shall ensure that their employees and representatives do not directly or indirectly solicit:
- 23.2.1 a payment or any offer of payment of anything of value whether in the form of compensation, a gift or a cash payment; or
- 23.2.2 any other form of benefit,
- from the other party, its employees, agents or representatives in connection with the Contract or these Conditions which would unduly influence the representatives of the other party or otherwise be in breach of the Bribery Act 2010.
- 23.3 The Supplier warrants, represents and undertakes that:
- 23.3.1 its responses to Ocado's Safe and Legal questionnaire are complete and accurate;
- 23.3.2 it conducts its business in a manner that is compliant with the Relevant Requirements;
- 23.3.3 neither it, nor any of its officers, employees or other persons associated with it:
- (a) has been convicted of any offence in connection with or under any of the legislation set out in the Relevant Requirements; or
  - (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence in connection with or under any of the legislation set out in the Relevant Requirements.
- 23.3.4 it shall notify a senior executive of Ocado in writing as soon as it becomes aware of any breach, or potential breach of any of the Relevant Requirements included but not limited to:
- (a) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; or



- (b) any request or demand for any undue financial or other advantage of any kind received by any person in connection with the performance of the Contract.

23.3.5 it has implemented and shall continue to implement due diligence, audits and contractual processes for its subcontractors, suppliers and other participants in its supply chains, to ensure that there is no slavery, human trafficking, corruption or bribery in its supply chains.

Breach of this clause 23.3 shall be deemed a material breach and the Supplier shall indemnify Ocado pursuant to clause 17.1. (a) of these Conditions in the event that the Supplier is in breach of any of the provisions of this clause 23.3.

23.4 Breach of this clause 23 shall be deemed a material breach and in the event that either party has any reason to believe that the other party has breached any of the provisions of this clause 23 it may terminate this Contract forthwith upon written notice to the other party, without any liability to the other party and without prejudice to any other rights or remedies that either party may have against the other..

#### 24. **Waiver**

24.1 Neither:

- (a) a failure or delay by Ocado in exercising a right or remedy provided by this Contract or by law; nor
- (b) any course of dealing,

will be construed as a waiver of the rights or remedies provided by this Contract or a waiver of any other rights or remedies.

24.2 Any waiver by Ocado of any breach of, or any default under the Contract by the Supplier will not be a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract. Neither will it prevent Ocado from subsequently requiring compliance with the waived provision.

24.3 The rights and remedies provided by these Conditions are cumulative and (subject as otherwise provided) are not exclusive of any rights and remedies provided by law.

#### 25. **Assignment and subcontracting**

25.1 The Supplier shall not be entitled to assign or subcontract its rights, powers, duties, obligations and responsibilities arising under or pursuant to this Contract or any part of it without the prior written consent of Ocado, which shall not be unreasonably withheld.

25.2 The Supplier is not, as a result of any sub-contracting arrangement, relieved from the performance of any obligation under this Contract and will be responsible and liable for all acts and omissions of a sub-contractor.

26. **Severability**

26.1 If the whole or any part of any provision(s) of this Contract is held by a competent authority to be invalid or unenforceable, this shall not affect the validity of the remaining part of the provision, or any other provision.

27. **Governing Law and Jurisdiction**

27.1 The Contract shall be governed by and construed in accordance with the laws of England.

27.2 Each party agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Contract.

27.3 If the Code applies and a dispute arises in accordance with the provisions of Article 11(2) or Article 11(3) of the GSCOP Order, Ocado shall deal with such dispute in accordance with Article 11 of the GSCOP Order.

28. **General**

28.1 In these Conditions, unless the context otherwise requires:

- (a) references to these Conditions include references as varied, supplemented and/or replaced in any manner from time to time;
- (b) references to any enactment shall be construed to include references to such enactment as from time to time amended, consolidated, modified, extended, re-enacted or replaced and any subordinate legislation made under it;
- (c) references to one gender include all genders and reference to the singular shall include the plural and vice versa; and
- (d) headings are inserted for convenience only and shall be ignored in construing these Conditions.