

These General Terms and Conditions shall apply to any Agreement entered into between TOMRA and the Purchaser as defined below.

## 1. DEFINITIONS

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- 1.1 "**Agreement**" means the written order of the Purchaser as accepted by TOMRA, TOMRA's quotation as accepted by the Purchaser or any other written contract entered into by the Purchaser and TOMRA for the supply of Goods and/or Services.
- 1.2 "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are generally open for business in Belgium, and "Business Days" shall be construed accordingly.
- 1.3 "**Clause**" means a clause of these General Terms and Conditions.
- 1.4 "**Code of Conduct**" means TOMRA's Code of Conduct available under:  
<https://www.tomra.com/en/about-tomra/compliance#cid109d6>
- 1.5 "**Contract Price**" means the agreed amount stated in the Agreement as further specified in Clause 8.1 for the supply of the Goods and performance of the Services.
- 1.6 "**Defect**" means any defect, imperfection, other fault or deficiency or damage to, the Goods or the Services, including any element of the design, engineering or manufacture which (i) does not comply in any respects with the requirements of the Agreement; (ii) does not comply in any respects with applicable laws; (iii) is of improper or inferior workmanship, by reference to the standards that would reasonably be expected of an experienced supplier or contractor with expertise in the supply of goods or performance of services equivalent in size, scope and complexity of the Goods or Services; or (iv) is not free from errors or omissions in design or engineering.
- 1.7 "**Delivery Date**" means the date identified as such in the Agreement.
- 1.8 "**Place of Delivery**" means the location identified as such in the Agreement, to which TOMRA shall deliver the Goods under the Agreement.
- 1.9 "**Purchaser**" means the person specified as such in the Agreement.
- 1.10 "**Final Acceptance**" of the Goods means the earlier of: (i) signing of the final acceptance protocol regarding the Goods; (ii) unconditional payment of the Contract Price regarding the Goods.

- 1.11 "**Force Majeure**" means any event or circumstance which: (a) prevents the affected Party from properly performing its obligations; (b) is beyond the control of such Party; (c) such Party could not reasonably have provided against; (d) having arisen, such Party could not reasonably have avoided or overcome; and (e) is not substantially caused by the other Party, and shall include, subject to (a) to (e) above being satisfied; (f) war, hostilities (whether war be declared or not) or invasion, act of foreign enemies; (g) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war; (h) riot, commotion, disorder, strike or lockout by persons other than the employees of Parties and their subcontractors; (i) munitions of war, explosive materials, ionising radiation or contamination by radioactivity in excess of occupational levels as allowed by local governmental regulations, except as may be attributable to TOMRA's use of them; (j) embargo and export/import restriction imposed by statutory authorities; and (k) natural catastrophes such as earthquakes, hurricanes, typhoons or volcanic activity. Force Majeure excludes: (a) changes in economic or market conditions or financial hardship during or after the execution of the Agreement; (b) delays by statutory authorities and third party suppliers not caused by the events referred to in (a) through (j) of the preceding paragraph; and (c) snow, rain, wind and weather conditions not referred to in (a) through (k) of the preceding paragraph.
- 1.12 "**Good Industry Practice**" means the exercise of that degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled and experienced manufacturer and supplier of goods and provider of services applying the standards generally adopted by professional and skilled manufacturers, suppliers and service providers involved in the safe manufacture and delivery of goods of a type and scale similar to the Goods and/or the performance of services of a type and complexity similar to the Services (as appropriate).
- 1.13 "**Good(s)**" means the item(s) to be supplied by TOMRA to the Purchaser under the Agreement, as identified in the Agreement, excluding Spare Parts.
- 1.14 "**Information**" means all documentation, data and other information whether written or oral, in any form, including without limitation technical, commercial and business information.
- 1.15 "**Intellectual Property**" means all intellectual and industrial property including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, rights of confidence, improvement, technique, copyright including rights in computer software, unregistered design right, technical information or drawing, and database and topography rights, and rights in the nature of unfair competition and rights to sue in passing off, and including in each case any pending applications or rights to apply for registrations of any of these rights, and any analogous rights to any of these rights, wherever in the world arising.
- 1.16 "**Services**" means the installation and/or technical support services (if any) specified in the Agreement, to be performed by TOMRA under the Agreement.
- 1.17 "**Spare Parts**" means a replaceable component, sub assembly, and assembly identical to and interchangeable with the item it is intended to replace.
- 1.18 "**Specifications**" means the specifications for the Goods, Spare Parts and Services set out in the Agreement.

- 1.19 "TOMRA" means the TOMRA entity specified in the Agreement.
- 1.20 "Third Party IPR" is defined in Clause 13.4.
- 1.21 "Warranty Period" means the period from the date of delivery until whichever is the sooner of: (i) twelve (12) months after Final Acceptance; or (ii) eighteen (18) months after the date of delivery of the Goods. Regarding Spare Parts the Warranty Period shall also be twelve (12) months after delivery, provided that the Purchaser has stored the Spare Parts in accordance with TOMRA's storage conditions.

## 2. DELIVERY OF GOODS AND/OR SPARE PARTS

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- 2.1 **Delivery.** TOMRA shall deliver the Goods and/or Spare Parts to the Purchaser at the Place of Delivery in accordance with the agreed Incoterms 2010 set out in the Agreement. TOMRA shall give the Purchaser not less than ten (10) Business Days' notice of the date on which it intends to deliver the Goods and/or Spare Parts. Within five (5) Business Days after receipt of such notice, the Purchaser shall confirm whether the proposed date is acceptable or notify an alternative date for delivery. If the Purchaser does not react to TOMRA's notice, the proposed delivery date shall be deemed accepted. Unless otherwise agreed, the date of delivery shall be a Business Day.
- 2.2 **Delivery Date.** TOMRA shall deliver the Goods on or before the Delivery Date. TOMRA shall promptly give notice to the Purchaser of any anticipated delay in delivery. TOMRA shall be entitled to claim an extension of the Delivery Date if and to the extent that delivery of the Goods is or will be delayed by Force Majeure or by any delay, impediment or prevention caused by or attributable to the Purchaser.
- 2.3 **Liquidated Damages for Delay.** If TOMRA fails to deliver the Goods within fourteen (14) calendar days following the Delivery Date, TOMRA shall pay delay damages to the Purchaser for this default at a rate of zero-point-two percent (0,2%) per completed week of the Purchase Price set out in the Agreement for the delayed Good(s). Delay damages shall be paid at such rates for the period from the Delivery Date until the date on which the Goods are actually delivered. The total amount due under this Clause shall not exceed five percent (5%) of the amount set out in the Agreement for the delayed Good(s). These delay damages shall not relieve TOMRA from his obligation to deliver the Goods in accordance with the Agreement. The Parties agree that in view of the impact that the delay in delivering the Goods will have on the relevant project, the delay damages are an exclusive remedy and a genuine, fair and reasonable pre-estimate of the actual damage that will be suffered by the Purchaser as a result of the delay in delivery of the Goods and do not constitute a penalty.
- 2.4 **Partial Deliveries.** Except to the extent otherwise stated in the Agreement or otherwise agreed by the Parties in writing, partial deliveries shall be permitted under the Agreement.
- 2.5 **Hazardous Goods.** To the extent any hazardous or toxic substances are delivered by TOMRA under the Agreement, they shall be marked by TOMRA with the appropriate international danger symbol(s). Transport and other documents must include a declaration of the hazard and a description of the material in English.
- 2.6 **Operating Instructions.** TOMRA shall provide to the Purchaser, together with the Goods, all operating instructions and information reasonably required by the Purchaser relating to the transport, handling, storage and use of the Goods.

### 3. INSPECTION AND REJECTION OF GOODS

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- 3.1 Inspection prior to Delivery.** The Purchaser reserves the right at any time during normal working hours to inspect the manufacture of the Goods, at TOMRA's premises prior to delivery, upon reasonable prior notice to TOMRA at its own cost. No such inspection shall relieve TOMRA of any obligation, responsibility or liability under the Agreement or otherwise.
- 3.2 Inspection upon Delivery.** Without prejudice to its rights under Clause 3.3 in respect of defective Goods (and/or Services, if applicable), the Purchaser shall inspect the Goods and/or Spare Parts (and/or Services, if applicable), within a reasonable period after delivery or performance (being not less than fourteen (14) calendar days). If the Purchaser identifies any failure to comply with the Agreement during such inspection (including without limitation any failure to comply with the warranties under Clause 7.2), it shall notify TOMRA in writing, providing reasonable details, and may reject the relevant Goods and/or Spare Parts and/or Services (if applicable).
- 3.3 Rejection upon Delivery.** If the Purchaser rejects any Goods, Services or workmanship pursuant to Clause 3.2 TOMRA shall, as soon as reasonably practicable, i.e. within a reasonable period of at least twenty-eight (28) Business Days of receipt of the Purchaser's notice under Clause 3.2, either remedy the rejected Goods so as to procure compliance with the Agreement or provide replacement Goods (at TOMRA's option) or re-perform the Services. Notwithstanding Clause 8.3, the Contract Price in respect of the rejected Goods or Services shall be payable to TOMRA within thirty (30) calendar days of delivery of the remedied or replacement Goods or re-performed Services.
- 3.4 Risk on Rejection.** If the Purchaser rejects any Goods, the property shall immediately revert to TOMRA. Rejected Goods shall be collected by TOMRA at its expense at a time to be agreed with the Purchaser and the risk shall revert to TOMRA upon collection of the rejected Goods.
- 3.5 Approvals.** All approvals (whether in the form of a consent, an approval, an authorization, a direction, a request or in any other form) must be requested in writing by TOMRA and given in writing by the Purchaser. Whenever Goods or Services are furnished, produced or performed by TOMRA in accordance with designs, drawings, specifications, diagrams, samples or procedures, produced or prepared by TOMRA [or made available to TOMRA] (the "Reference Documents"), no approval of such Reference Documents by the Purchaser shall diminish or modify TOMRA's obligations under the Agreement. In undertaking any such review and comment, the Purchaser assumes no responsibility whatsoever for the acceptability of any Reference Documents or for the satisfactory supply of the resulting Goods or performance of the resulting Services that are furnished, produced or performed in accordance with such Reference Documents.

### 4. TITLE TO, AND RISK IN, GOODS; DEFAULT OF ACCEPTANCE

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- 4.1 Warranty of Title.** TOMRA represents and warrants that it has good title to the Goods and has the unencumbered right to sell the Goods to the Purchaser free of any charge, lien or other encumbrance and TOMRA has obtained and/or shall make available to the Purchaser all licenses, clearances, consents and authorizations necessary for the purchase of the Goods by the Purchaser.
- 4.2 Transfer of Title.** Title to Goods shall pass to the Purchaser upon unconditional payment in full for such Goods. Until title to Goods has been transferred to the Purchaser, the Purchaser undertakes to (i) maintain the Goods in satisfactory condition and (ii) do everything possible to protect the Goods against any form of partial or complete deterioration.

- 4.3 **Risk of Loss or Damage.** Risk of loss of or damage to the Goods shall pass from TOMRA to the Purchaser in accordance with the agreed Incoterms 2010 indicated in the Agreement.
- 4.4 **Default of Acceptance.** If the Purchaser refuses to accept the Goods on the Delivery Date and/or refuses to grant approval for shipment, the Purchaser shall be deemed to be in default of acceptance. During the default of acceptance TOMRA shall act as the bailee (“dépositaire”/”bewaarnemer”) of the Purchaser and shall keep the direct possession for the Purchaser.

## 5. PERFORMANCE

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- 5.1 **Performance of Services.** TOMRA shall perform the Services (if any) fully in accordance with the requirements set out in the Agreement, and otherwise in accordance with the Agreement. TOMRA shall supply all the necessary equipment and obtain all the necessary licenses and permits for the performance by it of the Services.
- 5.2 **Compliance with Laws and Regulations.** TOMRA shall, in performing the obligations under the Agreement, comply with all laws and regulations applicable at the time the Goods and/or Spare Parts are delivered and/or the Services rendered.
- 5.3 **Cost of Services.** Except to the extent specified otherwise in the Agreement, all costs of performing the Services are included in the Contract Price and TOMRA shall not be entitled to any further payment in respect thereof.
- 5.4 **Access to Site.** The Purchaser shall grant TOMRA such access to the Site as may reasonably be required to perform the Services, at times to be agreed with the Purchaser and subject to any security and operational restrictions. While on the Site, TOMRA shall comply with the Purchaser’s Site Safety and Security Rules and such other procedures and regulations notified to him from time to time by the Purchaser.
- 5.5 **Co-operation.** TOMRA shall co-operate with, and avoid unnecessary disruption to, the Purchaser’s personnel and other persons carrying out activities on or near the Purchaser’s premises.
- 5.6 **EHS.** TOMRA and the Purchaser shall comply with all applicable environment, health and safety standards, regulations, rules and procedures and instructions. TOMRA shall take all necessary precautions to protect the health and safety of its personnel, the employees of the Purchaser, the Purchaser’s subcontractors, agents and other third parties involved in the performance of the Agreement. TOMRA reserves the right to refuse and/or withhold its performance if the Purchaser violates any of the applicable environment, health and safety standards, regulations, rules and procedures and instructions on its site which constitutes a potential risk for TOMRA’s employees or TOMRA’s sub-contractor or any other third party engaged by TOMRA.

## 6. TOMRA'S PERSONNEL AND COMPLIANCE WITH CODE OF CONDUCT

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- 6.1 **TOMRA's Personnel.** TOMRA's personnel and any subcontractor's personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations for the proper and timely delivery of the Goods and/or performance of the Services.
- 6.2 **Compliance with Code of Conduct.** The Purchaser’s officers, directors, employees and agents shall at any time for the duration of the Agreement comply with the Code of Conduct.



## 7. STANDARD OF PERFORMANCE AND SUPPLIER WARRANTY

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- 7.1 **Good Industry Practice.** TOMRA shall manufacture and deliver the Goods and Spare Parts, perform the Services and otherwise perform its obligations under the Agreement in accordance with Good Industry Practice and as required by the Agreement.
- 7.2 **Warranty.** TOMRA hereby represents, warrants and undertakes to the Purchaser during the Warranty Period:
- (a) that the Goods and the Spare Parts shall: (i) be fit for the purposes for which they are intended, as specified in the Agreement; (ii) comply with the Agreement, including all requirements concerning performance; (iii) be new and free from Defects, and (iv) comply with all applicable laws (including environmental laws) as are prevailing when the relevant Goods are delivered;
  - (b) that the Services (if any) shall: (i) be performed in accordance with the Agreement; (ii) be performed in accordance with Good Industry Practice; (iii) be carried out and completed without infringing any third party Intellectual Property rights; and (iv) comply with all applicable laws (including environmental laws) as are prevailing when the relevant Services are performed;
  - (c) that the warranty set out in Clause 7.2(a) shall apply on equivalent terms to any elements of the Goods that are remedied or replaced by TOMRA, with effect from the date of completion of the relevant remedial work or supply of the replacement Goods (as the case may be), for a period of twelve (12) months, but no longer than eighteen (18) months after delivery of the Goods and/or Spare Parts.
- 7.3 **Obligation to Remedy.** If the Purchaser identifies any failure to comply with the warranty under Clause 7.2 or during the Warranty Period, the Purchaser shall notify TOMRA in writing, providing reasonable details of the breach. Within a reasonable period of at least twenty-eight (28) Business Days after receipt of such written notice, TOMRA shall at its own cost either remedy the affected Goods or Services so as to procure compliance with the warranties set out in Clause 7.2 or provide replacement Goods or re-perform the Services (at TOMRA's option), except where the Purchaser has not used the Goods for purposes for which they are intended as specified in the Agreement.
- 7.4 **Failure to Remedy Defects.** Without prejudice to the Purchaser's other rights under the Agreement, if TOMRA fails to remedy or replace the affected Goods or Services pursuant to Clause 7.3 within a reasonable time, a reasonable date may be fixed by the Purchaser, on or by which the Goods or Services are to be remedied or replaced. If TOMRA fails to remedy, re-perform or replace the affected Goods or Services by this notified date, the Purchaser may reject the affected Goods or Services and TOMRA shall repay to the Purchaser any amounts paid hereunder in respect of such Goods or Services or may remedy the Goods or re-perform the Services itself in which case TOMRA shall pay to the Purchaser all costs and losses incurred by the Purchaser in remedying the Goods or Services – subject to the limitations of liability defined under Clause 11.

## 8. PRICE AND PAYMENT

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- 8.1 Contract Price.** The price payable by the Purchaser to TOMRA for the supply and delivery of the Goods and/or Spare Parts and performance of the Services (if any) and for any remedied or replacement Goods or Services under Clauses 3.3 and 7.3 shall be the Contract Price stated in the Agreement. Unless stated otherwise in the Agreement the Contract Price is a fully inclusive fixed price which includes all costs of packing, labelling, royalties and license fees (if applicable), but excluding carriage, insurance, delivery, and all other charges, VAT, taxes, duties and impositions (including customs import or analogous duties).
- 8.2 Payment.** The Contract Price shall be payable in accordance with the payment schedule set out in the Agreement. All payments shall be made by the Purchaser to TOMRA within thirty (30) calendar days of receipt and verification of TOMRA's proper invoice or within thirty (30) calendar days after the date for payment under the payment schedule, whichever is the later, to the bank account nominated by TOMRA.
- 8.3 Effect of Non-Payment.** If all or part of any payment due from the Purchaser to TOMRA under the Agreement is not paid by the date for payment specified in Clause 8.2, TOMRA shall be entitled to give notice to the Purchaser requiring payment. If such non-payment persists for more than thirty (30) calendar days after the date for payment specified in Clause 8.2, such failure is agreed to be a material breach of contract, and TOMRA shall be entitled to (i) give notice to the Purchaser requiring it to remedy such breach in accordance with Clause 15.2.; and (ii) claim eight (8) % interest p.a. for the amount due.

## 9. TOMRA SECURITY

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- 9.1 Bank Guarantee.** If specified in the Agreement, TOMRA shall provide in respect of the Goods (and performance of the Services, if any), or in respect of a down-payment received an irrevocable, unconditional bank guarantee in favour of the Purchaser and in the amount and for the term specified in the Agreement. Any bank guarantee provided shall be subject to the current guarantee template of TOMRA's bank guarantee provider.
- 9.2 Bank Guarantee Provider.** The bank guarantee shall be provided or confirmed by a bank or insurance company assigned by TOMRA.
- 9.3 Costs.** All cost and expense related to the provision of the bank guarantee shall be borne by Purchaser.

## 10. INSURANCE

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- 10.1 Insurance.** TOMRA shall carry and maintain in force at all times during the term of the Agreement any and all insurances required by applicable laws.

## 11. LIMITATION OF LIABILITY

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- 11.1 Consequential Loss and Limitation.** Neither Party shall be liable for any indirect or consequential damage including but not limited to loss of profit, loss of revenue, loss of data, loss of goodwill, loss of reputation, loss of business opportunities, loss of anticipated savings and third-party claims. Unless otherwise stated in this Agreement or agreed in writing, the total liability of a Party towards the other Party under each Agreement is limited to fifty percent (50%) of the Contract Price thereof.
- 11.2 Exceptions.** The limitations of liability under Clause 11.1 shall not apply to (i) damages caused by fraud ("fraude"/"bedrog"), wilful misconduct ("dol"/"opzet") or gross negligence ("faute lourde"/"zware fout"), (ii) personal injury or death, or property damage caused by the Goods (Product Liability) or the Services rendered; or (iii) claims and damages covered by Clause 12 (Confidentiality) and 13 (Intellectual Property and Indemnity).

## 12. CONFIDENTIALITY

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- 12.1 General Duty.** Each Party (the "Receiving Party") will hold the Information disclosed to it by the other Party (the "Disclosing Party") in strict confidence and shall not, without the prior written consent of the Disclosing Party, use, publish or disclose to any person, nor cause or permit any of his employees, servants or agents to use, publish or disclose such Information, except as necessary for the performance of the Receiving Party's duty under the Agreement or as otherwise permitted by the Agreement. However, the Purchaser shall be entitled to disclose the Information to its joint venture partner(s), contractors, professional advisers and prospective commercial lenders as necessary for the development of the project to which the Goods and Services relate.
- 12.2 Exemptions.** The restrictions under Clause 12.1 shall not apply to any Information that:
- (a) is already known to the Receiving Party before receiving the Information from the Disclosing Party, otherwise than in breach of confidence to the Disclosing Party and without restriction as to use or disclosure;
  - (b) is or becomes publicly generally available through no wrongful act or failure to act of either Party
  - (c) is lawfully received by the Receiving Party from a third party, otherwise than in breach of confidence to the Disclosing Party and without restriction as to use or disclosure
  - (d) is approved for release with the prior written consent of the Disclosing Party; or
  - (e) is required to be disclosed pursuant to a requirement of a governmental body or as required by law, regulation or stock exchange rule
- 12.3 Duration.** The confidentiality obligations set out above shall remain in effect for the duration of the Agreement and for a period of five (5) years from the expiry or earlier termination of the Agreement.
- 12.4 Title to Information.** The Parties acknowledges and agrees that the Information disclosed by the Disclosing Party to the Receiving Party is or is deemed to be the sole and exclusive property of the Disclosing Party. The Receiving Party may, at his cost, copy and use such Information for the purposes of performing his obligations under the Agreement but for no other purpose. The Receiving Party shall promptly return all such Information to the Disclosing Party upon the Disclosing Party's request following the expiry or termination of the Agreement.



### 13. INTELLECTUAL PROPERTY AND INDEMNITY

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- 13.1 Grant of Rights.** TOMRA hereby grants to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, transferable license to use all Intellectual Property in the design documents, drawings, software, operating instructions and other documents (as appropriate) produced by TOMRA or prepared or made by TOMRA, its employees, agents or sub-contractors for the purpose of fulfilling the Agreement.
- 13.2 Pre-Existing Intellectual Property.** All pre-existing Intellectual Property of either Party shall remain the exclusive property of the Party owning it.
- 13.3 No Grant of Future Rights.** Nothing in this Agreement shall be construed as a transfer and/or as a grant of any right or license by any existing or future patent, patent application or other Intellectual Property from one Party to the other Party. The Purchaser shall not be entitled to file any patent, especially a process patent, referring to any Intellectual Property of TOMRA, including but not limited to the Goods or any technology contained therein.
- 13.4 Intellectual Property Indemnification.** TOMRA shall indemnify and keep indemnified the Purchaser and its affiliates against all claims, liabilities, proceedings, costs, damages, losses and expenses (including legal expenses) incurred or suffered by the Purchaser or for which the Purchaser will become liable and which arises out of or in relation to any third party claim in respect of infringement of third party rights in Intellectual Property (“Third Party IPR”) arising in connection with:(i) TOMRA’s design, manufacture or installation of the Goods; (ii) the proper use of the Goods; or (II) the performance of the Services.
- 13.4.1 TOMRA shall not be responsible for indemnifying the Purchaser for the aforementioned infringements of Third Party IPR,
- (a) if Purchaser modified the Goods or Intellectual Property without the prior consent of TOMRA or its affiliates, to the extent that such infringement would not have happened without such modification; or
  - (b) in the event of a claim based on the combination of the Intellectual Property or Goods with any other products, software, hardware, materials, content, equipment or elements not provided by TOMRA or by Purchaser in a way not covered either by the underlying Agreement or by the instructions or authorizations of TOMRA or otherwise agreed by TOMRA, to the extent that such infringement would not have happened without such combination; or
  - (c) if the Intellectual Property or Goods are used for an unauthorized purpose and/or manner and/or way not covered either by the underlying Agreement or by the instructions or authorization of TOMRA or otherwise agreed by TOMRA and/or in a country outside the European Union, to the extent such infringement would not have happened without such use
- 13.4.2 Each Party shall promptly notify the other Party in writing of any claim of said Third Party IPR against the other Party which it is aware or becomes aware and/or if it becomes aware of any infringement or potential infringement of any Third Party IPR in the Intellectual Property or Goods.

- 13.4.3 In the event of any claims being made or action brought against Purchaser:
- (a) Purchaser shall promptly notify TOMRA thereof including provision of all information and documents necessary for the defence and/or all negotiations and/or litigation for a settlement in relation to any such infringement or alleged infringement; and
  - (b) The Parties shall together consult negotiate and use reasonable efforts to agree – within 30 (thirty) calendar days at the latest – how to defend against the claim jointly. Either Party shall provide the other Party with the necessary assistance and information without undue delay.
- 13.4.4 If the Parties have not agreed about the joint defence within the period above, TOMRA shall have at its own costs the lead of the defence and shall lead/conduct the defence and/or all negotiations and/or litigation for a settlement in relation to any such infringement or alleged infringement.
- 13.4.5 In all cases of Clauses 13.4.3 and 13.4.4 each Party shall afford all reasonable assistance in contesting any such claims.
- 13.4.6 In the cases of Clause 13.4.3 TOMRA shall indemnify Purchaser for any costs and expenses incurred, including costs for damages according to a settlement agreement if the settlement agreement has been concluded or approved by TOMRA prior in written form.
- 13.4.7 If the use of the Intellectual Property and/or the Goods or parts thereof is prohibited by a court decision of or if a lawsuit on the grounds of infringement of Third Party IPR is imminent, TOMRA may – in addition to its other obligations under this Clause 13 – at its option and own expenses either:
- (a) Modify or replace the allegedly infringing Intellectual Property and/or Goods so as to comply with the Agreement and to avoid the infringement or alleged infringement of the Third Party IPR and any injunction or court order. Any such replacement or modification shall be approved by Purchaser in advance which shall not be unreasonably withheld; and/or
  - (b) Obtain for Purchaser a license without additional costs allowing Purchaser to continue use the Intellectual Property and/or Goods or parts thereof allegedly infringing the Third Party IPR and to exercise its other rights granted under the Agreement in respect of the Intellectual Property and/or Goods; and/or
  - (c) Defend the claim and/or negotiate and/or litigate for a settlement in relation to any such infringement or alleged infringement and indemnify Purchaser for any costs and expenses incurred, including costs for damages, judgement, court order as awarded by a competent court or according to a settlement agreement.

## 14. FORCE MAJEURE

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- 14.1 Notice.** If either Party, despite all reasonable efforts on the part of the affected Party to minimize or avoid the same, is or will be prevented from performing any of its obligations under the Agreement as a result (direct or indirect) of Force Majeure, the affected Party shall, give written notice to the other Party within ten (10) calendar days after the first occurrence of the Force Majeure specifying so far as known the probable time, and extent to which the affected Party will be unable to fulfil its obligations under the Agreement and attach such relevant supporting documentation as is reasonably available.
- 14.2 Non-performance.** Provided notice is given in accordance with Clause 14.1 above, performance of the Parties' obligations under the Agreement shall be suspended while and to the extent only that such performance is so affected by the Force Majeure.
- 14.3 Cessation of Force Majeure.** The affected Party shall give written notice to the other Party as soon as practicable after the relevant Force Majeure has ceased to affect the performance of the obligations under the Agreement and shall resume performance of the affected obligations.

## 15. DURATION AND TERMINATION

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- 15.1 Duration.** The Agreement shall commence on the date of the Agreement and, unless terminated earlier in accordance with the Agreement, shall expire when the Parties have each complied in full with all their respective obligations under the Agreement.
- 15.2 Suspension or termination by TOMRA for Cause.** TOMRA may in its sole discretion, (partially) suspend or terminate the Agreement with immediate effect, without prior notice of default or judicial/arbitrational intervention, and without having to pay any compensation or other indemnity to the Purchaser, by giving written notice to the Purchaser if:
- (a) the Purchaser becomes bankrupt or insolvent to the extent permitted by applicable law;
  - (b) the Purchaser commits a material breach of the Agreement and fails to remedy such breach within thirty (30) calendar days after receiving written notice from TOMRA requiring such remedy (or, if such breach cannot reasonably be remedied within thirty (30) calendar days, if the Purchaser fails to commence to remedy within such period and to proceed diligently to complete such remedy);
  - (c) the Purchaser fails to make payment to TOMRA in accordance with Clause 8.4 and fails to remedy such breach within thirty (30) calendar days after receiving written notice from TOMRA requiring such remedy (or, if such breach cannot reasonably be remedied within thirty (30) calendar days, if the Purchaser fails to commence to remedy within such period and to proceed diligently to complete such remedy);
  - (d) the Purchaser fails to comply with the Code of Conduct.
- 15.2.1** In the event of termination under this Clause 15.2, the Purchaser shall pay TOMRA (i) the amounts payable under the Agreement for all Goods delivered and Services performed up to the date of termination; (ii) the cost of raw materials for the manufacture of the Goods which have been delivered to TOMRA or of which TOMRA is liable to accept delivery, which materials shall become the property of the Purchaser and promptly be delivered to the

Purchaser (and provided that to the extent TOMRA is able to re-sell or re-use such materials, it shall do so, and the Purchaser shall not be liable for such costs); and (iii) any reasonable costs incurred by TOMRA in terminating contracts with subcontractors and/or suppliers for the Goods or Services.

15.2.2 In the event that sums already paid by the Purchaser under the Agreement exceed sums payable to TOMRA under Clause 15.2, TOMRA shall reimburse any excess to the Purchaser.

**15.3 Termination by the Purchaser for Cause.** The Purchaser may terminate the Agreement with immediate effect by giving written notice to TOMRA if:

- (a) TOMRA becomes bankrupt or insolvent to the extent permitted by applicable law; or
- (b) TOMRA commits a material breach of the Agreement and fails to remedy such breach within thirty (30) days after receiving written notice from the Purchaser requiring such remedy (or, if such breach cannot reasonably be remedied within thirty (30) days, if TOMRA fails to commence to remedy within such period and to proceed diligently to complete such remedy).

**15.4 Consequences of Termination by the Purchaser for Cause.** In the event of termination under Clause 15.3 for TOMRA insolvency or default, TOMRA shall only be entitled to payment for the Goods properly delivered and/or the Services properly performed up to the date of termination, and the Purchaser shall be entitled to recover any and all costs arising from such termination, including as a result of the Goods and/or Services having been completed and/or supplied by third parties.

**15.5 Suspension or Termination without Prejudice.** Any suspension or termination of the Agreement shall be without prejudice to any rights, obligations and/or liabilities of either Parties that have accrued prior to such suspension or termination.

**15.6 Force Majeure Termination.** If either Party is prevented from performing all or substantially all of its obligations as a result of Force Majeure for a continuous period in excess of six (6) months, the other Party may terminate the Agreement forthwith by giving thirty (30) calendar days written notice to the affected Party. In such case, the Purchaser shall pay TOMRA in accordance with Clause 15.2.

**15.7 Effect of Expiry or Termination.** The rights and obligations in Clauses 11 (Limitation of Liability), 12 (Confidentiality), 13 (Intellectual Property and Indemnity) 15 (Duration and Termination) and 17 (Governing Law and Dispute Resolution) and this Clause 15, and other provisions necessary to be invoked beyond the duration of the Agreement (including all those providing for limitation of or protection against liability of the Parties) shall survive termination, cancellation or expiration of this Agreement.

## 16. MISCELLANEOUS

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**16.1 Purchaser's Standard Terms.** The Parties agree that no general terms and conditions of the Purchaser (including but not limited to those of purchase/sale/trading) shall apply to the Agreement or the work to be carried out by TOMRA hereunder.

**16.2 Subcontracting.** TOMRA shall be entitled to subcontract any of its obligations under the Agreement without the Purchaser's prior written consent. TOMRA shall be fully responsible for the acts and omissions of all subcontractors, and his agents or employees, as if they were the acts or defaults of TOMRA.

- 16.3 **Assignment.** Neither Party may assign, novate or otherwise transfer this Agreement or any of its rights, benefits, obligations and/or liabilities under the Agreement to any third party without the prior written consent of the other Party.
- 16.4 **Set-off.** The Purchaser may deduct from any sum due to TOMRA under or in connection with the Agreement or any other agreement any sum due from TOMRA to the Purchaser under or in connection with the Agreement, provided that the counter-claims of the Purchaser are undisputed or have been determined by a final judicial and/or arbitral decision.
- 16.5 **Severability.** Each provision of the Agreement is severable and distinct from the others. If any provision of the Agreement (or part thereof) shall be, or be found by any authority or court of competent jurisdiction to be, invalid, illegal or unenforceable (i) the remainder of the Agreement shall not thereby be affected and shall remain in full force and effect and (ii) the Parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with a valid, legal and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid, illegal or unenforceable provision but differing from the replaced provision as little as possible. If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.
- 16.6 **Waiver.** No waiver by a Party of any right or remedy shall operate as a waiver of, or preclude any exercise or enforcement of, that right or remedy in the future (except to the extent expressly stated in the waiver). No waiver shall be effective unless given in writing, signed by the Party giving the waiver, and expressly stating the right or remedy to which it relates.
- 16.7 **Notices.** Any notice (which for the purposes of this Clause includes, without limitation, any request, instruction, invoice, waiver, consent or copy notice) given hereunder shall be in writing and in the English language and delivered to the other Party by: (i) reputable courier service, all courier charges prepaid; (ii) personal delivery; or, (iii) facsimile. In each case Delivery shall be to the address or facsimile number for such other Party and addressed to the attention of the person identified for such other Party, as set out in the Agreement, or to such updated address, facsimile number or person as the receiving Party may have previously notified the Disclosing Party in writing under this Clause.
- 16.8 **Effect of Notices.** A notice shall be deemed to take effect from the day it is actually received or, if received after 5pm at the place of delivery or on a day that is not a Business Day, the next Business Day after receipt.
- 16.9 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties hereto relating to its subject matter. Each Party acknowledges that it has not relied on any prior representations, writings, negotiations or understandings with respect to the subject matter of the Agreement.
- 16.10 **Variation.** No modification or variation of the Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties by their duly authorized representatives. The foregoing shall also apply to any waiver of this written form requirement.
- 16.11 **Counterparts.** The Agreement may be executed in two (2) separate counterparts by the Parties, each of which when so executed and delivered shall be an original, but both of which shall together constitute one and the same instrument.
- 16.12 **Relationship of the Parties.** Nothing contained in this Agreement shall constitute a representation or agreement that the Parties hereto are members of any partnership, joint venture, association, agency



or other entity for any purpose whatsoever and the Parties hereto agree and acknowledge that they are independent contractors as their services relate to each other. Neither Party shall have the authority to contract for or bind the other in any manner whatsoever. Nothing in this Agreement shall be construed as implying joint liability between the Parties.

## 17. GOVERNING LAW AND DISPUTE RESOLUTION

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- 17.1 Governing Law.** The construction, validity and performance of the Agreement shall be governed by the laws of Belgium, without its conflict of law provisions.
- 17.2 Conventions on the Sale of Goods.** The following shall not apply to this Agreement: (i) the United Nations Convention on Contracts for the International Sale of Goods of 1980 (UN-CISG), (ii) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by Uniform Laws on International Sales Act 1967, and (iii) United Nations Convention on the Limitation Period in the International Sale of Goods of 1974 and the amending Protocol of 1980.
- 17.3 Arbitration.** In respect of all disputes arising out of or in connection with the Agreement, the Parties shall first attempt to resolve the dispute by amicable negotiations between the Parties. If the Parties are unable to resolve the dispute within twenty one (21) calendar days of a dispute notice provided by one Party to the other (or within such other time as agreed in writing by the Parties) either Party may by written notice to the other, refer the dispute to arbitration, and such arbitration shall be conducted in Brussels, Belgium and in English (or in such other place and language as agreed in writing between the Parties). If a Party refers the dispute to arbitration, then all disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Parties will continue to perform their obligations under the Agreement, notwithstanding the existence of a dispute, on the understanding that such performance shall not constitute a waiver of any rights and remedies that they may have under the Agreement. Nothing herein will prejudice the right of a Party to seek injunctive relief in respect of a dispute under Clause 17 or any matter arising under the Agreement.

## 18. INTERPRETATION

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- 18.1** Clause headings are included for convenience only and shall not affect the interpretation of the Agreement.
- 18.2** If there is any inconsistency between the provisions of any other document forming part of the Agreement the following order of precedence shall apply: (i) Confirmed Agreement; (ii) these General Terms and Conditions; (iii) other Annexures referred to in the Agreement. In the event of an inconsistency between the provisions in one of the categories listed at (i) - (iii) above, the same hierarchy shall determine which provision takes precedence.
- 18.3** This translation of the original English version of the General Terms is for convenience only. In the event of any inconsistency between the English and the XXX version the English version shall prevail.

## 19. DATA PROTECTION

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- 19.1 TOMRA, acting as a data controller, uses personal data relating to the Purchaser's employees and representatives for, a.o., the performance of this Agreement and client management purposes. For more details on how TOMRA uses such personal data, check: <https://www.tomra.com/en/privacy>, which may be updated from time to time.