



## RECKITT BENCKISER UK COMMERCIAL STANDARD TERMS AND CONDITIONS OF SALE

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These Conditions apply to the sale of Products by RB unless varied or excluded by written agreement. Any terms and conditions which may appear, or be referred to, on any purchase orders, invoices, forms or other documents or communications (whether printed or electronic) or internet site purporting to supersede or replace these Conditions shall not apply unless accepted in writing by RB. Delivery personnel and other agents acting for RB have no authority to agree additional terms or variations to these conditions on behalf of RB.

### 1. DEFINITIONS

In these conditions the following words have the following meanings:

**“Adverse Event”** means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related given in Condition 12.4;

**“Data Protection Legislation”** means all laws relating to the processing of personal data, privacy and security (including, without limitation, the GDPR, the UK Data Protection Act 2018, the EU Privacy and Electronic Communications Directive 2002/58/EC) as implemented in any jurisdiction and all amendments, or all other applicable international, regional, federal or national data protection laws, regulations and regulatory guidance;

**“Delivery Slots”** means a 30-minute period for delivery of the Goods agreed pursuant to Condition 2.3;

**“Designated Retailer”** shall have the meaning given in the GSCOP Order;

**“Early Settlement Discount”** shall have the meaning given in Condition 7.10;

**“GDPR”** means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**“Goods”** means any goods agreed pursuant to these Conditions to be supplied to You by RB (including any part of parts of them);

**“GSCOP Code of Practice”** means the Code of Practice as referred to in the GSCOP Order;

**“GSCOP Order”** means The Groceries (Supply Chain Practices) Market investigation Order 2009 (including any amendments as may be made from time to time);

**“Intellectual Property”** means any patent, copyright (including without limitation moral rights and software), database right, design right, registered design, trademark or service mark (registered and unregistered), domain name, know-how, utility model, unregistered design or other industrial or intellectual property right subsisting in any part of the world and, where relevant, any application for protection or proprietorship of any such right;

**“MHRA”** means the Medicines and Healthcare Product Regulatory Agency;

**“On Time”** means that the Goods are at Your premises or made available for collection as appropriate plus or minus 30 minutes of the Delivery Slot for those Goods;

**“Order”** means the contract for Your purchase of RB Goods that is formed pursuant to Condition 2.3;

**“Parties”** means both You and RB (and “Party” shall mean either of the Parties as the context so requires);

**“Personal data” and “Process”** have the meaning given to them in the GDPR;

**“Product Recall”** has the meaning given in Condition 11.4;

**“Promotion Costs”** means the costs of or arising from or relating to a Promotion;



**“Promotion”** means an offer for a specific volume of Goods or period for the sale of Goods by You at an introductory or reduced price or that gives Your customers and/ or the consumer of the Goods some other additional benefit;

**“Purchase Order”** means Your request for delivery of Goods by RB pursuant to these Conditions;

**“Recall Goods”** means the Goods that are the subject of a Product Recall;

**“RB”** means RB UK Commercial Limited (or any other member of the Reckitt Benckiser Group Plc group of companies making sales of Goods in the United Kingdom), being the company with which an Order is placed pursuant to these Conditions; and

**“Working Day”** means a day which is not a Saturday, Sunday or Bank or Public Holiday in England;

**“You”, “Your”, “Yourself”** means the person(s), firm or company that places an Order for Goods with RB.

## 2. ORDERING

### 2.1. Basis of the Supply under these Conditions

These Conditions shall apply to all arrangements RB have with You for the supply of Goods and any services unless varied or disapplied with RB written agreement. These Conditions, together with any other written understanding between the Parties including any Order, shall constitute the agreed terms between the Parties for the supply of Goods by RB to You. These Conditions shall apply to the exclusion of all other terms and conditions expressed or implied (including any terms and conditions which You purport to apply under any Purchase Order, invoice, web portal, specification or other document or notification or electronic data interchange or online or electronic ordering service or any form of communication whatsoever and whenever). If You are a Designated Retailer, RB acknowledge that these Conditions include the GSCOP Order. In the event that there is any conflict between these Conditions or any Order and the provisions of the GSCOP Order, the provisions of the GSCOP Order shall prevail.

### 2.2. Effect of these Conditions

Subject to where agreed in writing with RB any specifications, samples, advertising, brochures or catalogue produced shall be for the sole purpose of giving an appropriate idea of the Goods and shall not have any contractual force.

If RB agree with You to incorporate documents, processes, manuals, pages of websites and other arrangements of contractual effect then, if there is a conflict or ambiguity between these Conditions and those other contractual arrangements, these Conditions will prevail.

### 2.3. Offer and Acceptance

Each Purchase Order for Goods You place with RB shall be deemed to be an offer by You to purchase the specified Goods subject to these Conditions. Any such Purchase Order shall be accepted in part or full entirely at RB discretion. No Purchase Order placed by You shall be deemed to be accepted by and binding on RB until the earlier of:

- a) written acknowledgement is sent by RB confirming the Purchase Order (and any variations thereto); or
- b) RB discussing and agreeing with You a suitable Delivery Slot for the Goods in Your Purchase Order; or
- c) RB delivery to You of the Goods specified in Your Purchase Order (as varied in accordance with these Conditions).

- d) Once accepted in accordance with this Condition, each such Purchase Order shall become a binding contract (each an “Order”). All Orders are accepted subject to and incorporate these Conditions, including without limitation, RB having Goods available for supply to You.

#### **2.4. RB Receipt of Your Order**

If You have not been contacted by RB or RB delivery operators to arrange a Delivery Slot, You should contact RB Customer Services Team in order to ensure that the Purchase Order has been received. Unless RB arrange a Delivery Slot with You, RB shall have no liability to You for failure to deliver the Goods in accordance with Your Purchase Order.

#### **2.5. RB Rights to Cancel Your Order**

RB may cancel part or all of Your Order, at any time without incurring any liability to You, if:

- a) the Goods are not available for any reason, (including without limitation if they have been discontinued or altered or their manufacture has in some way been hindered or prevented) and RB are unable to agree with You the supply of an alternative Goods;
- b) RB do not accept the Delivery Slot stated in Your Purchase Order (if any) and / or a Delivery Slot acceptable to both Parties cannot be agreed with You within 3 Working Days of RB acceptance of the Order;
- c) Your Order is not in accordance with RB delivery requirements (as further set out in Condition 2.6 below);
- d) Your Order requests delivery to a location not previously agreed with You in accordance with Condition 3.1; or
- e) RB are in any way unable to fulfil the Order (in full or in part) due to circumstances outside RB reasonable control.
- f) RB will seek to promptly advise You if RB cancel an Order (in full or in part) in this way, but shall have no liability to You for failure to deliver the Goods to You in accordance with Your Purchase Order unless such Purchase Order was accepted by, and binding on RB, under Condition 2.3.

#### **2.6. RB Order & Delivery Requirements**

RB have minimum and maximum Order and / or delivery levels for Goods or configurations of Goods that RB will notify to You from time to time. If an Order (either in itself or together with other Orders placed by You) is below those minimum levels or configurations or above those maximum levels or configurations, RB may, at RB absolute discretion, cancel those Orders.

#### **2.7. Accuracy of Your Purchase Order**

It is Your obligation to ensure that Your Purchase Order is complete and accurate. If a Purchase Order is not complete or is inaccurate, then RB can choose at RB absolute discretion not to fulfil that Purchase Order and RB will seek to promptly advise You if RB intend not to fulfil a Purchase Order in this way but shall have no liability to You for this. If in response to an inaccurate Purchase Order, RB deliver Goods to You in accordance with RB best interpretation (acting reasonably) of such Purchase Order, You will accept delivery of and pay for the Goods delivered and otherwise comply with these Conditions as if the Purchase Order as interpreted by RB was correct.

**For the avoidance of any doubt, EDI ordering includes full EDI integration inclusive of pricing for the Order.**

#### **2.8. Your Order Cancellation Rights & Obligations**

If at any time prior to RB delivery of the Order You cancel Your Order (or any part of an Order) by giving RB notice in writing of such cancellation, RB will only accept such cancellation on condition that You pay RB cancellation charge to reimburse RB reasonable and properly incurred costs, including (without limitation), any costs RB have incurred in relation to fulfilling that Order (such as preparation of the Order, picking transportation) or costs RB incur as a result of You cancelling that Order (such as costs arising from abortive or part or small deliveries). RB will notify You of such cancellation charges as soon as reasonably practicable when You seek to cancel the Order and RB invoice for such costs may be raised by RB following such cancellation and notification.

### **2.9. Discontinuation or variation of any of RB Goods**

If RB decide to discontinue, re-design or otherwise alter any of RB Goods, the Goods' product range, Goods' specification, coding, packing or configuration, RB shall provide You with as much notice as reasonably possible, typically a minimum of six (6) weeks prior notice of the exit / new product development date. RB do not operate a 'sale or return' policy at any time, nor will RB fund any mark-down of any of Your stock.

## **3. DELIVERY ISSUES**

### **3.1. How RB Deliver**

Goods shall be delivered to the location specified in the Order provided it is one of the pre-agreed addresses recorded in RB accounts system as an address for delivery unless:

- a) otherwise agreed between the Parties; or
- b) You require, and RB have agreed to, the use of Your nominated haulier (back haulage).

RB shall attempt to make delivery of Goods on day 4 in respect of Orders received before 12 mid-day GMT on day 1 (where such days refer to working days being Monday to Friday excluding public bank holidays in the UK).

Subject to Condition 3.5, delivery of the Goods shall take place upon physical delivery to the address specified as above or, where You are collecting the Goods, at the point the Goods are collected and loaded on to Your nominated haulier transport at RB premises.

### **3.2. RB Delivery Times**

Although RB will use RB reasonable endeavours to deliver Goods on time as per a request specified in a Purchase Order or an agreed Delivery Slot, any such dates and times are intended to be estimates only and time for delivery shall not be of the essence. Where (as set out in Condition 3.1(b)) the Goods are to be collected, then the time of delivery is when the Goods are made available for collection in accordance with the agreed collection slot. If no time is specified or a Delivery Slot has not been agreed, Delivery will be within a reasonable time.

### **3.3. RB Delivery Assurances to You**

If RB are unable to fulfil a Delivery Slot then RB will endeavour to give You as much notice as possible and will seek to agree a new Delivery Slot with You in accordance with Condition 2.3 on a priority basis.

### **3.4. Delayed Delivery**

RB will not be liable for any loss (including without limitation loss of profit), costs, fees, damages, charges or expenses caused or incurred, directly or indirectly, by any delay in the delivery of the Goods (even where caused by RB negligence).



### **3.5. Delayed Delivery Due to Events Caused by You**

If RB are unable to deliver the Goods On Time because:

- a) You have not provided appropriate instructions, documents, licences or authorisations;
- b) You have not accepted delivery (or, as set out in Condition 3.1(b), collected the Goods) despite the Goods being presented for delivery On Time; or
- c) the Goods would have been delivered On Time but for their being held in a queue at or near Your premises, the Goods will be deemed to have been delivered upon RB delivering such Goods up to the point specified in the relevant sub-condition above, and RB may at RB absolute discretion:
  - i. wait until You accept delivery of the Goods and charge You for all reasonable and properly incurred costs, charges and losses incurred by RB (including, without limitation, haulage charges) resulting from deemed delivery as set out above;
  - ii. store the Goods until actual delivery (provided that You agree within 3 Working Days of the original Delivery Slot a new Delivery Slot acceptable to RB) – in which case, delivery will be in accordance with these Conditions, except that You will also be liable for all reasonable and properly incurred costs and expenses (including, without limitation, storage, picking, loading, unloading, haulage, insurance and related overhead costs) arising from the failure to deliver; and/or
  - iii. terminate any Orders (including the Order in respect of which RB were unable to make delivery and any other Order which is outstanding between RB) without liability to You and charge You all reasonable and properly incurred costs and expenses incurred by RB (including, without limitation, storage, picking, loading, unloading, haulage, insurance and related overhead costs) in relation to such terminations.

### **3.6. Failing of Your Delivery Point**

If any of Your delivery points refuse or delay delivery of Goods or impose unreasonable restrictions or procedures or otherwise cause difficulties for delivery of RB Goods, and are not expressly entitled to do so in accordance with these Conditions (“Delivery Problems”), then, if RB notify You of those Delivery Problems and You do not resolve them within a reasonable timeframe, RB shall be entitled, at RB absolute discretion, to suspend further deliveries of RB Goods to such delivery points.

### **3.7. Your Unloading Facilities**

You will provide at Your expense at the place of delivery, adequate and appropriate facilities (to ensure dry, clean and safe unloading), equipment and manual labour for unloading the Goods. RB driver shall not be obliged to unload a vehicle or use any of Your machinery to enable You to meet Your obligation under this Condition or Condition 3.16 below.

### **3.8. Back-haul and Your Obligations**

Where (as set out in Condition 3.1(b)) You have required RB (or RB agent) to use Your nominated haulier, risk in those Goods passes to You on collection and loading of the Goods by Your haulier and RB are not liable for any additional costs incurred in delivering the Goods including, without limitation, those arising from Your failing to accept or delaying collecting and loading of the Goods and therefore delaying delivery to Your premises. You are responsible for insuring these Goods from and including collection and loading. Your haulier is required to inspect RB delivery and sign RB delivery note on loading the Goods and for the avoidance of doubt the provisions of Conditions 3.11 to 3.14 will apply to such collections.

### **3.9. RB Outer Packaging**

RB shall use RB reasonable endeavours to ensure that the outer packaging for the Goods shall be reasonably suited for domestic transit in the UK but shall have no further liability to You in respect of the packaging of items for delivery.

### **3.10. Delivery by Instalments**

Although RB normally make single deliveries, RB may, at RB absolute discretion, make delivery of the Goods by instalments and invoice You for each instalment individually. Where the Goods are to be delivered in instalments (such as where not all the Goods Ordered by You are available at the same time), RB will separate Your Order into two or more separate sub-orders and each sub-order will constitute a separate contract and failure by RB to deliver any one or more of the instalments in accordance with these Conditions as applied to that sub-order, or any claim by You in respect of any one or more sub-orders, shall not entitle You to treat the Order as a whole as repudiated or to refuse to accept other sub-orders. In such circumstances You shall be responsible for payment of the quantity of Goods delivered in each sub-order as recorded in accordance with this Condition.

### **3.11. Your Obligation to Inspect on Delivery**

You shall be responsible for arranging for inspection of the Goods and ensuring the Goods comply with Your Order and are of an appropriate quality on delivery. RB shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after delivery (or deemed delivery under Condition 3.5) or where You have noted the issue on delivery but not allowed RB driver or other personnel to witness that inspection.

### **3.12. Proof Of Delivery Notes and Evidence of What RB have Delivered**

The quantity of any consignment of Goods is recorded by RB on a RB Proof Of Delivery note ("POD") or equivalent document provided to You upon delivery. Such POD shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary. Upon receipt of the POD, You must clearly record in full any damage or discrepancies between the POD and the Goods delivered to You (including without limitation and shortages in the Goods delivered compared to the POD) which would be reasonably apparent in delivery, including, without limitation:

- a) any incorrect Goods;
- b) any visual damage; and/or
- c) any short deliveries.

You must sign or appropriately stamp the POD at the time of delivery and return it, together with any damaged Goods or evidence of any other discrepancy apparent on delivery, to RB driver.

### **3.13. Delivery of Goods not Requested in An Order**

In the event that the Goods actually delivered do not correspond to those requested in the Order (such as delivery of incorrect Goods or additional Goods not requested in the Order), such discrepancy should be recorded in writing on the POD **at the time of delivery** and returned to RB driver, together with any Goods which are the subject of the discrepancy.

### **3.14. Failure to highlight discrepancies on the POD**

You acknowledge that the POD provided to You reflects the Goods delivered by RB and therefore accept that, unless a discrepancy is clearly identified on the POD **at the time of delivery** and returned to RB driver (together with any Goods which are the subject of the discrepancy – if applicable), You will be liable for the invoice raised



for the Goods as set out in the POD. It is Your responsibility to check the Goods at the point of delivery and accordingly, any POD marked “**SIGNED UNCHECKED**” or some similar marking shall be deemed to indicate delivery of all of those Goods detailed on the POD.

**Save for latent defects notified pursuant to Condition 3.18 (b) and subject to Condition 9.2, RB will not accept any liability, and in no circumstances save for pursuant to Condition 7.4 9 (a) to (b) shall You be entitled to set off any amount whatsoever, for any purported discrepancy between the POD and the Goods physically delivered and/or originally requested in an Order, unless such discrepancy is recorded on the POD.**

### **3.15. Discrepancies with an Invoice**

Goods are invoiced at the price set by RB and reasonably notified to You from time to time, and not at the price specified in any Purchase Order submitted by You. RB will notify You if there is any discrepancy between the price set out in Your Purchase Order and that recorded on RB systems and in the absence of any rejection of the price notified to You prior to delivery of the Goods, the price recorded on RB systems shall prevail.

In the unlikely event of any discrepancy between an invoice and the POD, a claim must be made to the customer services team in writing within seven (7) days of the date of the invoice, otherwise the invoice shall be deemed correct. If the invoice needs to be updated to reflect any errors in delivery as recorded on the POD, RB customer Services team will liaise with You to resolve the situation and issue a debit or credit note as soon as possible. **In the event that an invoice is queried but the invoice is consistent with the POD and no discrepancy was recorded on the POD at the time of delivery, then provided the invoice reflects the correct prices for the Goods as described above, payment of the invoice must be made in full and in no circumstances shall You be entitled to set off any amount whatsoever in respect of that invoice.**

### **3.16. Your Commitment on Turnaround Time**

Unloading of the Goods, signing or appropriately stamping the POD and authorising departure of the vehicle must take place within 90 minutes of the commencement of the Delivery Slot.

### **3.17. RB Failure to Deliver**

If RB fail to deliver the Goods subject to the Order (in whole or in part), and RB did not give any notice of cancellation in accordance with Condition 3.3, then You must give written evidence to RB Logistics Representative of the failed delivery by the end of the Working Day following the agreed Delivery Slot. Provided You have done so, RB liability for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note for the price of the undelivered Goods against any invoice raised for such Goods otherwise, RB shall have no liability for that failure to deliver and You must pay the relevant invoice in full.

### **3.18. When You have Legally Accepted RB Goods**

You will be deemed to have accepted the Goods as being in accordance with the Order and these Conditions unless:

- a) Apparent Defects: upon delivery You notify RB in writing of any apparent defect or other failure of the Goods to conform with the Order by recording such defect on the POD; or
- b) Latent Defects: where the defect or failure would not reasonably be apparent on delivery, You notify RB in writing of any defect or other failure of the Goods to conform with the Order within 3 days of the time You first became aware (or ought reasonably to have become aware) of the defect, failing which You shall not be entitled to reject the Goods and RB shall have no liability for such defect or failure,

and You shall be bound to pay the price as if the Goods had been delivered in accordance with Your Order.

### **3.19. Expiry Dates**

Unless otherwise agreed in writing, RB give no warranty to the amount of time remaining from delivery of the Goods until the end of the “Expiry Date” marked on the Goods.

### **3.20. RB Primary Packaging, Labelling and Trade Marks**

You shall not at any time alter, remove or tamper with any primary packaging (excluding outer packaging) or any labelling or trade marks on any Goods, or affix any additional trade marks or trade designations on to any Goods without RB prior written consent. In no circumstances shall You tamper with, remove or alter the “Expiry Date”. You must not sell the Goods after the “Expiry Date”. In no circumstances shall You sell Goods which are damaged so that, in RB reasonable opinion, their integrity is compromised.

### **3.21. The Condition of RB Goods on Resale**

You shall ensure that all Goods made available for resale are in the same condition (including, without limitation, packaging (excluding outer packaging)) as they were on delivery by RB, unless agreed otherwise by RB in writing.

### **3.22. Multi-Packs on Resale**

Where the Goods are supplied in special consumer packs that contain more than one unit (i.e. multi-packs), these are sold to You on the condition that they will be resold to the consumer in this format and You shall not split them into individual units.

### **3.23. Bar-Codes**

The printing of bar codes on RB outer cases is for convenience only and although RB will endeavour to observe the EAN UCC specifications, as administered in the UK by the Association for Standards and Practices in Electronic Trade – EAN UK Limited, RB cannot accept liability for any loss (including, without limitation, loss of profit) costs, damage, charges or expenses directly or indirectly attributable to the absence of or any error in such bar code printing.

## **4. PASSING OF RISK AND LEGAL TITLE**

### **4.1. When a Risk Passes to You**

The Goods shall be at Your risk from the time of delivery (which will be determined in accordance with Condition 3.1).

### **4.2. When Title Passes to You**

Full legal title to and property in the Goods shall remain vested in RB (even though they have been delivered and risk has passed to You) until:

- a) RB have received payment in full, in cash or cleared funds, in accordance with these Conditions in respect of all Goods that have been supplied pursuant to an Order; and
- b) all other money payable by You to RB on any other account or under these Conditions generally or any other contract between the Parties has been received by RB in full.

### **4.3. Your Obligations Prior to Transfer of Full Legal Title to You**

Until full legal title and property in the Goods passes to You:

- a) You shall hold the Goods on a fiduciary basis as RB bailee (or RB principal where RB are acting as an agent);



- b) You shall store the Goods at Your premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them on RB behalf, without any charge to RB, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods. RB shall be entitled to examine any such Goods in storage (and in the case of third party storage, You shall procure such right for RB) at any time during normal business hours upon giving You reasonable notice of RB intention to do so (subject to RB observing Your reasonable regulations and instructions relating to security and health and safety as notified to RB in advance);
- c) RB may at any time, on demand and without prior notice, require You to deliver the Goods up to RB and RB may repossess and resell the Goods if any of the events specified in Condition 15.1 occurs or if any sum due to RB from You under these Conditions or on any other account or under any other contract is not paid when due;
- d) for the purposes of this Condition 4.3(b) and 4.3(c), RB, RB employees, agents and sub-contractors shall be entitled to free and unrestricted access to any premises owned, occupied or controlled by You at any time (and in the case of third party storage, You shall procure such right for RB) on prior notice (subject to RB observing Your reasonable regulations and instructions relating to security and health and safety as notified to RB in advance); and
- e) RB shall be entitled to maintain an action against You for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to You.

#### **4.4. Resale prior to legal title transferring**

RB hereby authorise You to use and/or sell the Goods in the normal course of Your business and to pass good title in the Goods to Your customers, if they are purchasers in good faith without notice of RB rights provided that:

- a) any sale shall be affected in the ordinary course of the Your business at full market value; and
- b) Your right to resell shall automatically cease on the occurrence of any event set out in Condition 15.1 and/or if any sum owed to RB by You under an Order, these Conditions generally or any other debt from You to RB has been received by RB in full.

#### **4.5. Other Remedies**

RB rights and remedies set out in this Condition 4 are in addition to, and shall not in any way prejudice, limit or restrict, any of RB other rights or remedies in law or equity.

#### **4.6. Following Termination**

Following termination of any Order, RB rights (but not Yours) under this Condition 4 shall continue in full force and effect.

## **5. PROMOTING WITH RECKITT BENCKISER**

### **5.1. Agreeing Promotion Funding**

RB will not have any liability for Promotion Costs unless:

- a) You have notified RB in advance of the Promotion; and
- b) our authorised representative has agreed in advance in writing (including agreeing the amount of the Promotion Costs, the mechanism and duration of the relevant Promotion and any key criteria You

must achieve and/or otherwise include during the Promotion) that RB will be responsible for part or all of the Promotion Costs; and

- c) promptly, after the end of the Promotion or otherwise on RB request, You are able to demonstrate to RB reasonable satisfaction that You have performed the Promotion in full as agreed under Condition 5.1(b) (including if applicable the amount of actual sales or sales which both Parties have agreed will trigger a payment of Promotion Costs (including redemptions, vouchers and coupons).

### **5.2. Long Stop Date for Presentation of Your Invoices**

Where RB do agree to pay for some or all Promotion Costs, then those Promotion Costs must be claimed within twelve (12) months of, and not before, the end date of the applicable Promotion, accompanied by reasonable adequate documentation evidencing the claim. Unless otherwise agreed, such claim shall be paid in accordance with RB standard payment terms (as set out in Condition 7.1). If the Promotion Costs are not claimed in this way and within this timeframe, then RB will not have any liability to You for them.

### **5.3. Forecasts Provided By You**

Unless otherwise agreed with RB, You are responsible for ensuring any forecasts You provide are made in good faith and are compiled with due care and accuracy. You will only place Purchase Orders for Goods which, in Your reasonable opinion and acting in good faith, will be sufficient and not excessive for the Promotion. If RB are in any way contributing to the Promotional Cost and RB consider that the quantity ordered in any Order or forecasted is unreasonable or excessive, then RB may request You to: (i) provide evidence of Your actual sales; and (ii) any Goods that You have purchased for the Promotion, which have not been sold by You as part of the Promotion, will have their price adjusted to the price that would have applied if RB had not provided the Promotional Cost in respect of such Goods. RB will then issue an appropriate invoice for the difference in amount due, which will be paid by You in accordance with these Conditions.

### **5.4. Where RB Have Made a Special Promotion Investment**

You acknowledge that RB may make a special investment specific to You in relation to a Promotion and therefore, RB may agree with You a minimum order quantity and/or delivery configuration of Goods which will be the subject of the Promotion. You will then be obliged to purchase that quantity in that configuration to qualify for that special investment.

### **5.5. Resale of Discounted Goods**

Where the Goods are supplied by RB to You at a discount (howsoever funded and whether provided at the time of purchase or retrospectively) for promotional purposes, You agree that such Goods will only be sold in accordance with the promotional mechanic agreed (including without limitation, where RB have agreed an MPP (as described and defined below).

Where, in agreeing to fund a Promotion, RB agree a level of funding against Your then current chosen retail selling price (which RB will obtain from a store audit, Your website or another system to which You have granted RB direct access) (the resulting price point being referred to as a “Maximum Promotional Price” or “MPP”), RB funding is conditional upon it being applied in its entirety to Your retail pricing, for the benefit of consumers. Accordingly, the funding is conditional upon You reselling those Goods at or below the Maximum Promotional Price. Clearly, You remain entirely free to price those Goods at or below the MPP in Your absolute discretion and remain entirely free to determine Your retail prices following the end of the Promotional support or Promotional period.

Where You decide to resell the Goods above the MPP or other than in accordance with any agreed Promotional mechanic, RB can withdraw RB support for such Promotion and recover from You any Promotion Costs RB have paid or any other funding that was applied in respect of Goods for which such funding was provided but which were resold at a price greater than the MPP.

#### **5.6. Netting Off in Respect of Promotion Costs**

If, as set out in Condition 7.4 (b), RB have agreed in writing to a set off of costs chargeable by You to RB that relate to a particular Promotion against the price of Goods payable under an Order, then You must (within five (5) Working Days of the date of the invoice) provide reasonable justification for the set off, obtain RB written consent and issue an invoice to RB for the amount that is agreed to be set off, stating the number of RB invoice against which is being set off, Purchase Order number and a reasonable summary of the reasons for payment. Please note that unless otherwise agreed in writing, no deduction shall be made by You. For the avoidance of doubt, if the right of set-off is granted further to this Condition, the payment terms set out in Condition 7.1 shall not be affected.

## **6. PRICE**

### **6.1. The Price of RB Goods**

Unless otherwise agreed in writing by RB, the price for the Goods shall be the price at the date of receipt of Your Purchase Order by RB (or if that date is not a Working Day, the first Working Day following receipt). That price shall be as RB have notified to You in writing (which includes any price list or price file specific to You in relation to any Good or Goods) in force at the date of receipt of the Purchase Order by RB.

### **6.2. Price Increases**

Unless otherwise agreed with RB, RB will endeavour to provide You with a minimum of four (4) weeks' prior written notice in respect of any price move, unless specific commodity market conditions dictate otherwise, in which case, RB shall provide You with as much prior written notice as reasonably possible in the circumstances. RB shall not be obliged to justify any change in the price of Goods and the new price will become effective on the date specified in RB notice to You. Any Purchase Orders placed on or after that date will be subject to the new price, whether or not You have expressly agreed to the new prices at revised pricing.

For the avoidance of doubt, in the event that You do not meet any trading criteria that RB has notified to You in relation to the base price list offered, RB reserves the right to apply a price increase at any time to be applied to Your account within 28 days.

### **6.3. Your Price File Information on Your Systems**

In the event of a conflict between the price information in RB price files and the price information in Your price files or Your Purchase Order, RB price files shall prevail and You shall be invoiced according to RB price files.

### **6.4. What RB Price Includes and Excludes**

Unless otherwise stated by RB, RB prices include all costs and charges in relation to packaging, labelling and delivery. Unless otherwise agreed in writing, the price for the Goods shall be exclusive of any value added tax (or replacement tax), any import or export duties or other similar taxes, delivery charges, duties or imposts, all of which will be paid by You in addition to the price.

## **7. HOW AND WHEN YOU PAY RB**

### **7.1. Your Payment Obligations**

Regardless of when delivery of the Goods takes place, You will pay RB invoices within twenty eight (28) days of the invoice date.

## **7.2. When RB Require Payment**

Time for payment shall be of the essence and is required as set out in Condition 7.1 above.

## **7.3. Payment Mechanisms**

No payment shall be deemed to have been received until RB have received cleared funds. All payments shall be in UK pounds sterling unless otherwise agreed in writing. BACS / CHAPS and credit transfers shall be made to the address notified to You by RB.

## **7.4. Right to Full Payment**

You shall make all payments due under these Conditions without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise, **unless You have:**

- a) a valid court order requiring an amount equal to such deduction to be paid by RB to You,**
- b) RB have agreed to such deduction in advance in writing; or**
- c) the deduction is made in accordance with Condition 7.5 below.**

## **7.5. Withholding in Respect of Discrepancies**

In the event of any dispute in relation to an invoice properly raised by You (in good faith and in accordance with Conditions 3.14 and 3.15) within seven (7) days of the date of the relevant invoice, You may temporarily set-off only such part of the invoice as is in dispute until such time as the dispute is resolved provided that, in the event that the dispute is resolved in RB favour, You shall be liable for all costs associated with such dispute and all interest due on the withheld amount for the period from the due date of the invoice until full payment. For the avoidance of doubt, You must make payment to RB of any part of the invoice which is not in dispute in accordance with Condition 7.1. Payments made following resolution of any discrepancies will not be subject to any Early Settlement Discount (where applicable) unless the discrepancy is resolved and the payment made within the Early Settlement Discount timeframe (agreed with You in writing).

## **7.6. Reference to Correct Invoice Identification Numbers**

If payments received from You are not stated to refer to a particular invoice, RB may appropriate such payment to any outstanding invoice addressed to You from RB (or any other company within the Reckitt Benckiser Group Plc group of companies).

## **7.7. Receipts**

RB will not issue any receipt for payment made by cheque or BACS / CHAPS / credit transfer unless specifically requested by You in advance in writing.

## **7.8. No Credit Facility Offered**

No indulgence granted by RB to You concerning Your obligations under this Condition 7 shall be, or shall be deemed to be, a credit facility, but if any such facility is granted to You by RB, RB may withdraw at RB sole discretion at any time. RB may suspend performance of any Order (in whole or in part), until You satisfy RB as to Your creditworthiness or give RB such security as RB shall deem appropriate for the full value of the Goods for which payment is outstanding and/or for any other Goods for which You place a Purchase Order in the future.

## **7.9. Treatment of Late Payments**

If any sum due from You to RB under any Order, or these Conditions or any other contract between RB (eg JBP) is not paid on or before the due date for payment, then all sums owing by You to RB shall become due

and payable immediately and, without prejudice to any other right or remedy available to RB, RB shall be entitled to:

- a) cancel or suspend performance of any Order provided that RB give You prior written notice of RB intention to do so, including, suspending deliveries of the Goods and suspending delivery of any other Goods to You until arrangements satisfactory to RB as to payment or credit have been established;
- b) appropriate any payment made by You (or any member of Your group companies) to such of the Goods as RB may think fit;
- c) require You to pay for Goods prior to their despatch or collection from RB place of business; and
- d) charge You:
  - i. interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of five per cent (5%) per annum above the base lending rate of HSBC Bank plc prevailing from time to time until payment is made in full; and
  - ii. the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

#### **7.10. Early Settlement Discount**

**In the event that you choose to settle an invoice earlier than the Payment terms set out in condition 7.1 above and qualify for an Early Settlement Discount, subject to receipt of such payment by RB as cleared funds within 14 days of the invoice date (and where the 14th day falls on a weekend or bank holiday the cleared funds are received on the last working day within the 14 days) RB, at its sole discretion, will apply the standard settlement discount to the net invoice value (the “Early Settlement Discount”). For the avoidance of doubt and without prejudice to the terms and conditions set out herein, RB must receive cleared fund on or before the 14 days stipulated for you to qualify for the Early Settlement Discount.**

## **8. RB PROMISE TO YOU**

### **8.1. RB Assurance**

For the period up to and including the final day of expiry of the “Expiry Date” date as marked on the Goods, RB warrant that the Goods shall comply fully with all UK legislation relating to the manufacture and supply of such Goods as in force at the date of Your Order.

### **8.2. Treatment of Defective Good(s)**

Subject to Condition 8.3, if You establish to RB reasonable satisfaction that there is a defect in the Goods or the Goods are otherwise than in accordance with the Order, then RB shall, at RB option:

- a) where relevant, repair or make good such defect or failure in such Goods free of charge (including all costs of transportation of any Goods or materials to and from You for that purpose);
- b) replace such Goods with Goods which are in all respects in accordance with the Order; or
- c) issue a credit note to You in respect of the whole or part of the Order price of such Goods as appropriate having taken back such materials relating to such Goods,

subject, in every case, to the remaining provisions of this Condition 8 and provided that RB aggregate liability under this Condition 8 shall in no event exceed Your purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of RB liability for Goods having a defect.

### **8.3. Your Obligations in Relation to Defective Goods**

Condition 8.2 shall not apply:

- a) where the defect in the Goods would be apparent on delivery and You have failed to carry out an inspection on delivery or where You have noted the issue on the POD but not allowed RB driver or other personnel to witness that inspection as described under Condition 3.11,
- b) unless You notify RB in writing of the alleged defect within 14 days of the time when You discover or ought to have discovered the defect; and
- c) unless You afford RB a reasonable opportunity to inspect the relevant Goods and, if RB so request and where it is reasonable to do so, promptly return to RB or such other person RB may nominate a sample of the Goods within 24 hours, reasonable carriage paid by RB, for inspection, examination and testing and/or otherwise permit RB to have access to the Goods at Your premises or other location where they may be for such purposes.

### **8.4. Your Obligations on Agreed Uplifts**

Where RB have agreed to replace/uplift the Goods in accordance with Condition 8.2(a) or (b), You are obliged to:

- a) agree with RB in advance a reasonable collection slot;
- b) ensure that the Goods to be collected are in the same condition and correspond with the same description and quantity, as stated in RB uplift note and are ready for collection on the type of pallets used for RB delivery of the Goods (or such other pallets that RB notify to You); and
- c) provide RB with at least 24 hours notice in the event that the Goods will not be ready for collection at the agreed collection slot and seek to agree a new collection slot with RB on a priority basis.

All MHRA regulated products have to be returned within 3 Working Days if the delivery premises are not licensed for the storage and distribution of pharmaceutical goods by the MHRA

All MHRA regulated products may be returned within 5 Working Days from licensed premises.

All MHRA regulated products returns can be accepted from licensed premises up to 30 days after the original despatch but will require certification of appropriate storage from the Responsible Person (HC11 Form). This certification shall be supplied to RB no later than 14 days after the uplift.

### **8.5. RB Replacement Obligations**

If RB elect to replace the Goods pursuant to Condition 8.2(b), RB shall deliver the replacement Goods to You at RB's own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in You) immediately revert to RB.

### **8.6. Where RB Have No Liability to You in Respect of Defects**

RB shall be under no liability under the warranty at Condition 8.1 above or otherwise:

- a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions arising after RB delivery (or deemed delivery) of the Goods;
- b) for any failure to follow RB instructions (whether oral or in writing), including, without limitation, storage instructions and "Expiry" dates;
- c) where Goods held under ambient storage are not kept free from condensation;
- d) for any misuse or alteration or repair of the Goods without RB prior written approval; and/or
- e) if You make any further use of the Goods after noting any defect on the POD.

### **8.7. Exclusions**

The warranties set out in these Conditions are the only warranties which shall be given by RB and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Order.

### **8.8. RB Goods Specification**

RB reserve the right without liability to You to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which do not materially affect the quality or performance of the Goods. Where RB make such changes, RB will provide You with reasonable prior notice where legally required to do so.

## **9. EXCLUSION AND LIMITATION OF LIABILITY**

### **9.1. Scope of RB Liability**

Conditions 2.3, 2.5, 3.4, 3.5, 3.14, 3.15, 3.17, 5.1, 5.2, 8.2, 8.6, 9, 11.9 and 11.11 and the following provisions set out RB entire liability (including any liability for the acts or omissions of RB employees, agents and sub-contractors) to You in respect of:

- a) any breach of any Order or these Conditions; and
- b) any representation, statement or tortious act or omission including negligence arising under or in connection with any Order or these Conditions.

### **9.2. Legal Liability**

Nothing in these Conditions shall exclude or limit RB liability for any matter for which liability cannot be excluded or limited at law including without limitation RB's liability for death or personal injury by RB's negligence.

### **9.3. Maximum Liability**

Subject to Conditions 9.1, 9.2 and 9.4, RB maximum aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of an Order shall be limited to either: (a) our selling price of the Goods in respect of which You have suffered or incurred such loss or damage as set out in that Order; or (b) £25,000, whichever is the greater.

### **9.4. Limitation of Scope of RB Liability**

RB shall not be liable for any loss of profit, loss of data, loss of savings (even when advised of the same), loss of opportunity, any economic loss (direct or indirect) or any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) and/or loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arise out of or in connection with an Order or these Conditions.

### **9.5. Your Obligation to Insure**

The price of the Goods has been calculated on the basis that RB will exclude or limit RB liability as set out in these Conditions and You, by placing an Order, agree and warrant that You shall insure against or bear Yourself any loss for which RB have excluded or limited liability in these Conditions and RB shall have no further liability to You. Should You require RB to accept a greater liability under a specific Order or these Conditions generally, please notify RB and RB can consider how that will affect the prices at which You buy RB Goods.

## **10. YOUR OBLIGATIONS IN RELATION TO THE GOODS AND YOUR INDEMNITY TO RB**

### **10.1. Your Indemnity to RB**

You irrevocably and unconditionally agree to indemnify and keep indemnified RB, RB employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by RB or any of them directly or indirectly and whether wholly or in part resulting from any third-party claim, demand, proceedings or action following a sale by You of the Goods of Your storage of them pending sale unless and to the extent that such third-party claim, demand, proceedings or action results from any defect in the Goods (other than those defects resulting from Your storage).

### **10.2. Your Obligations in Relation to the Goods**

You shall at all times:

- a) follow RB reasonable instructions (whether oral or in writing) in relation to the Goods, including, without limitation, storage instructions and "Expiry" dates; keep the Goods at an appropriate temperature;
- b) keep Goods held under ambient storage free from condensation; and
- c) not misuse or alter or repair the Goods without RB prior written approval.

### **10.3. Sale of RB Goods**

Goods are sold to You on the condition that

- a) You shall not sell, market, promote or supply (directly or via a third party) any of the Goods to customers outside the European Economic Area (EEA);
- b) You have all relevant licences required to sell the Goods (including where relevant licences for the sale of healthcare Goods (including a Wholesale Dealers Licence)); and
- c) if Goods are subject to any restrictions on sale (including restrictions on the sale of healthcare Goods so that they are made by persons appropriately authorised), You supply such Goods only in compliance with such regulations (including where appropriate via authorised persons only).

## **11. SAFETY FIRST**

### **11.1. RB Product Guidelines**

You shall comply at all times with RB written instructions and all written guidelines issued from time to time by RB relating to the Goods concerning their storage, application, resale, recall and use and You shall refer Your employees and Your customers to such instructions and guidelines. RB instructions, guidelines and requirements set out in Conditions 11 and 12 override any of Your procedures, instructions or guidelines.

### **11.2. Your Product Recall Policy**

On request from RB, You shall provide RB with a copy of Your product recall policy.

### **11.3. Your Co-Operation**

Notwithstanding any other Condition, if RB notify You in writing of any defect in or relating to the Goods previously delivered to You at any time or any error or omission which exposes or may expose consumers to any risk of death, injury or damage to property, You shall co-operate fully and promptly with any steps taken by RB under Conditions 11.4 to 11.7 (inclusive) below.

#### **11.4. Recall Mechanisms**

RB may, at RB discretion, recall any Goods already sold by RB to RB customers (whether for a refund or credit or for replacement of the Goods which shall in each case be determined by RB at RB discretion) (“Product Recall”) and/or issue any written or other notification to RB customers about the manner of use or operation of any Goods already sold by You to Your customers.

#### **11.5. Your Necessary Assistance in a Recall Situation**

If there is a Product Recall You will co-operate with RB to ensure that the Product Recall is promptly and effectively dealt with including without limitation (where requested by RB or RB agent);

- a) advising promptly, and providing details to RB of, all retail outlets and trade customers (if any) to whom Recalled Goods have been supplied, and request such outlets and customers to comply with obligations equivalent to those in Conditions 11.4 to 11.7 (inclusive);
- b) ceasing to sell or distribute Recalled Goods;
- c) removing Recalled Goods from shelves at retail outlets and warehouses, returning them to Your central location, isolating them from other Goods and labelling them as “QUARANTINED”, ensuring that the Recalled Goods are not sold and making the Recalled Goods available for collection by RB;
- d) if specifically requested by RB, destroying the Recalled Goods in accordance with RB guidelines and, if required by RB, under the supervision of RB personnel or agent;
- e) carrying out stock audits to ensure all Recalled Goods have been identified and removed;
- f) appropriately displaying product recall notices, provided by RB, at all outlets;
- g) providing contact details (including 24 hour telephone contact) of Your relevant personnel responsible for arranging the Product Recall;
- h) allowing RB personnel or agents reasonable access to Your premises to allow audits to take place to check the effectiveness of the Product Recall;
- i) ensuring all of Your relevant personnel are aware of and prepared for applying the Product Recall procedures set out in Condition 11; and
- j) promptly completing and return to RB Product Recall checklists that RB provide to You.

#### **11.6. Communication of a Recall**

A Product Recall and procedures relating to it may be communicated to You by RB by any reasonable means including without limitation via telephone, fax, e-mail and trade publications. You will not make any public statement regarding a Product recall without RB prior written consent.

#### **11.7. Your Obligation to Update RB on Recall Status**

On request from RB, You shall report on how You have implemented the Product Recall procedures set out in this Condition 11 and the requirements set out in Condition 12.

#### **11.8. Renewal of Supply**

RB may, at RB absolute discretion, only supply Goods once RB are satisfied that You have complied with the obligations set out at Conditions 11.4 to 11.7 (inclusive).

#### **11.9. Your Obligations**

If You do not comply with Conditions 11.4 to 11.7 (inclusive) then RB, subject to Condition 9.2, shall have no liability (including without limitation product liability and liability arising from RB negligence) for the Recalled Goods to the extent that Your failure so to comply causes loss or damage.

#### **11.10. Recall Compensation**

Without prejudice to any other right or remedy available to You, if RB do initiate a Product Recall then, subject to Condition 11.9, RB shall pay to You as compensation:

- a) a refund of the price paid by You to RB for the Recalled Goods; and/or
- b) reimburse You for any liability You directly incur to Your retail consumers (but not any other type of customer) in relation to Recalled Goods, to the extent You are legally obliged to incur such liability to the customer in the absence of special contractual conditions.

#### **11.11. RB Limitation of Liability**

Subject to Conditions 11.10 or Condition 9.2, RB shall have no liability to You:

- a) in contract, statute, tort (including, without limitation, negligence) or otherwise for the Recalled Goods or other liability incurred relating to the Product Recall; nor
- b) for any Product Recall charges, expenses or penalties (including without limitation fixed charges) whether notified to RB at all, or before or after a Product Recall.

#### **11.12. Legal Scope of Your Obligations**

You shall use all reasonable endeavours to ensure that Your customers, (and in turn Your customers' customers) who are not retail consumers, are contractually obliged to comply with provisions equivalent to those of Conditions 11 and 12.3.

## **12. HOW RB DEAL WITH CONSUMER COMPLAINTS**

### **12.1. RB Deal with Complaints**

You are not authorised to make any representation on RB behalf in response to any consumer or other complaint.

### **12.2. RB Consumer Relations Care Line Information**

Subject to Condition 12.4, in the event of receipt of any complaint or query from a consumer in relation to RB Goods, please direct the consumer to RB Consumer Relations care line number (which is usually marked on RB Goods).

### **12.3. Scope of RB Liability If You Decide to Deal with Consumer Complaints**

If You or Your customer deals with a consumer's complaint in relation to any Goods without reference to RB, then RB shall have no liability except to the extent that RB are liable to You under these Conditions, to a maximum of the price at which RB sold the Goods (being the single item in respect of which the customer has complained) to You and RB shall, without prejudice to the generality of the foregoing, have no liability to You for Your costs or expenses, administrative or otherwise. RB shall have no liability under this Condition 12.3 unless You provide details of the reason for the complaint, the date of the complaint, the quality code for the relevant Goods and name and address of the relevant consumer (in all cases, where available and subject to any applicable laws applying to the sharing of such information as aforesaid).

### **12.4. Healthcare Products (All MHRA regulated products)**

You will report to RB any comment made by any person relating to any "Adverse Event", including, without limitation, any report relating to the efficacy of any of the Goods that are healthcare products, any report of Products being used during pregnancy and any report of Products being given to a child of an age for which the Products are not licensed (a "Report").

You will ensure that such Reports include at least the Minimum Information, where Minimum Information means:

- a) a description of the event;
- b) a description of the identified RB Product involved (along with any other medical products involved);
- c) the identity of the subject involved; and
- d) the identity of the person reporting the event.

You will ensure that Reports are made no later than the next Working Day after they are received by You, and are sent by e-mail to RB at: UKDSO@rb.com, or as otherwise advised in writing by RB.

You will ensure that Your staff are appropriately trained and documented, so as to ensure the correct performance of the obligations set out in this Condition 12.4.

### **13. SUB-CONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS**

#### **13.1. Assignment and Sub-Contracting**

You are not entitled to assign, charge, subcontract or transfer the Order or any part of it without RB prior written consent. RB may assign, charge, subcontract or transfer the Order or any part of it to any person.

#### **13.2. Third Party Rights**

Save where these Conditions expressly reserve rights in respect of a Party's group companies, any person who is not a party to the Order (including any employee, officer, representative or sub contractor of either party) shall have no right (whether under the Contracts (Rights of Third Parties) Act or otherwise) to enforce any provision or rights under an Order which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Condition. Even if a person who is not a party to this Agreement has a right to enforce any provision of this Agreement the Parties may vary or cancel this Agreement between them without requiring the consent of such third party.

### **14. FORCE MAJEURE**

#### **14.1. Events which cannot be reasonably controlled**

Each Party shall not be liable to the other Party for failure or delay in meeting its obligations under an Order to the extent that such failure or delay is attributable to circumstances beyond that party's reasonable control or those of its suppliers and sub-contractors (including, without limitation, Acts of God, pestilence, crop failure, disease, raw material shortages which affect availability of a product, fire, flood, lightning, war, revolution, acts of terrorism, strikes, lockouts or other industrial action or failure of IT systems) ("Force Majeure Event") provided that the Party whose performance of obligations under these Conditions is delayed or will not be completed promptly notifies the other part of such Force Majeure Event.

#### **14.2. Impact of such Force Majeure Events**

In the event that the Force Majeure Event continues for an uninterrupted period of 8 weeks from receipt of notice under Condition 14.1, or for an interrupted period of more than 12 weeks in any 52 week period, either Party may terminate the Order and any Orders then outstanding under these Conditions.

### **15. BREAKING OR TERMINATING THE AGREEMENT**

#### **15.1. RB Suspension and Termination Rights**

Each Party may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the other party) immediately terminate all Orders made pursuant to these Conditions if:



- a) the other Party commits a material breach of any of its obligations under these Conditions (including any Order hereunder) which is incapable of remedy;
- b) the other Party fails to remedy a breach of its obligations under these Conditions (including any Order hereunder) which is capable of remedy, or persists in any breach of any of its obligations under these Conditions (including any Order hereunder) after having been requested in writing by the first Party to remedy or desist from such breach within a period of 14 days;
- c) any distress execution or diligence is levied upon any of the other party's goods or property and is not paid out within 7 days of it being levied;
- d) the other Party (being a partnership) or Your partner offers to make any arrangements with or for the benefit of its creditor or its partner generally or there is presented in relation to it or its partner a petition of bankruptcy;
- e) the other Party (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the other Party calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or it presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of its business, undertaking, property or assets;
- f) the other Party ceases, or threaten to cease, to carry on business; or
- g) a secured lender of the other Party takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security;
- h) the other Party suffers or undergoes any procedure analogous to any of those specified in Conditions 15.1(c) to (g) inclusive above or any other procedure available in the country in which it is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;
- i) the other Party undergoes a change of Control and for the purposes of this Condition 15.1(i), "Control" has the meaning specified in Section 416 of the Income and Corporation Taxes Act 1998;
- j) the other Party acts or omits to act in such a way as would in the first party's reasonable opinion bring the first Party into disrepute or otherwise damage the first party's reputation; or
- k) the first Party reasonably believes that any of the events specified in Condition 15.1(a) to (j) inclusive above is about to occur in relation to the other party.

Without prejudice to any right or remedy available to RB, RB may suspend further performance of any of RB obligations under these Conditions (including all Orders hereunder) or delivery of Goods or stop any Goods in transit or by notice in writing to You if any of the events specified in Condition 15.1(a) to (j) inclusive above happens or is about to occur in relation to You.

## **15.2. Payments Due at Termination**

Notwithstanding any such termination or suspension in accordance with Condition 15.1 above, You shall pay RB at the appropriate rate under these Conditions for all Goods delivered up to and including the date of suspension or termination and the termination of these Conditions or any other contract for whatever reason shall not affect the rights or remedies of either Party in respect of any previous breach or in respect of any sum owing to or becoming owing to the other.

### 15.3. Survival of Certain Provisions After Termination

Any termination of any Order, or these Conditions, (for whatever reason) shall not affect the coming into force of the continuance in force of any provision of these Conditions which is expressly or by implication intended to come into or continue in force on or after such termination.

## 16. LEGAL NOTICES

### 16.1. Formal Communication with RB

All notices between the Parties about any matter arising under these Conditions must be in writing and delivered by hand or sent by pre-paid first class post or facsimile transmission:

- a) (in the case of notices to RB) to RB registered office marked for the attention of the General Manager or such other address as shall be notified by RB to You in accordance with this Condition 16; or
- b) (in the case of notices to You) to any address of Yours as set out in RB price and customer file or such other address as shall be notified to RB by You in writing.

### 16.2. Receiving Notices

Notices shall be deemed to have been received:

- a) if sent by pre-paid first class post, 2 Working Days after posting (exclusive of the day of posting);
- b) if delivered by hand, on the day of delivery or, if that is not a Working Day in the country of the recipient, the first Working Day after delivery; or
- c) if sent by facsimile transmission, at 10:00am on the first Working Day following dispatch, subject to being able to show that the notice was sent to the correct telephone number.

## 17. EVERYTHING ELSE

### 17.1. RB Intellectual Property Rights

Any Intellectual Property Rights created by RB in the course of the performance of an Order or otherwise in the manufacture of the Goods shall remain RB property. Nothing in these Conditions shall be deemed to have given You a licence or any other right to use any of RB Intellectual Property Rights. You shall not take any action which denigrates RB trade marks or in any way devalues the good will associated with RB Goods (including without limitations altering RB trade marks in any way or using on goods similar to RB Goods any marks or any-get up similar to that associated with RB Goods).

### 17.2. Structure

Nothing in these Conditions shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.

### 17.3. Waiver

The rights and remedies of either Party in respect of these Conditions shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance, or extension of time granted by such Party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. The waiver by either Party of any breach of these Conditions shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

### 17.4. Severance



If at any time any one or more of these Conditions (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from these Conditions and the validity and / or enforceability of the remaining provisions of these Conditions shall not be in any way affected or impaired as a result of that omission.

#### **17.5. Amendments**

Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by one of RB authorised signatories.

#### **17.6. Confidentiality**

Each Party shall keep confidential all confidential or sensitive information of the other Party (the “Discloser”), including without limitation all written or oral information or information in electronic form which is designated as confidential by the Discloser or which by virtue of its character or the circumstances or manner of its disclosure is evidently of a confidential nature (which shall include, but not be limited to, documents, drawings, specifications data, toxicological data, graphics, letters and samples, electronically transmitted documents, and e-mails) (“Confidential Information”) and shall not, without the prior written consent of the Discloser, disclose any Confidential Information to any third party and the Party receiving the Confidential Information (the “Recipient”) shall only disclose such Confidential Information to those of the Recipient’s employees (or those employees of its group companies), consultants, agents, sub-contractors or advisers who need to know such Confidential Information for the purposes of performing the Recipient’s obligations under these Conditions and who are bound by duties of confidentiality no less onerous than those contained in this Condition 17.6, which the Recipient agrees to enforce at its expense and the Discloser’s request.. Each party shall use the Discloser’s Confidential Information solely for the performance of their obligations under these Conditions. The provisions of this Condition 17.6 shall survive termination of any Order or of these Conditions.

#### **17.7. What You Say About RB Goods**

You agree that in respect of the Goods You shall not engage in any unfair trade practices or make any false or misleading statement or representations in advertising, printed material or otherwise with respect to any of the Goods bearing RB name or trade marks or other Intellectual Property.

#### **17.8. Data Protection and Privacy**

17.8.1. Your data protection and privacy rights are set out in our Privacy Policy: <https://www.rb.com/privacy-policy/>

17.8.2. When processing any personal data, each Party must comply with all applicable Data Protection Legislation at all time.

### **18. THE COURTS & LAW WHICH GOVERN RB RELATIONSHIP**

These Conditions and any dispute or claim arising out of or in connection therewith shall be governed by and be construed in all respects in accordance with English law.

Any dispute or claim arising out of or in connection with these Conditions shall be subject to the exclusive jurisdiction of the English Courts, to which the Parties irrevocably submit.