

**KITLOCKER.COM – STANDARD TERMS AND CONDITIONS OF BUSINESS FOR THE
SUPPLY OF GOODS AND SERVICES**

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The Client's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Standard Conditions.

1.1 Definitions:

Brand Guidelines: means from time to time, the written instructions issued by Kitlocker or the Primary Brand Licensor concerning the use of any IPR of Kitlocker and/or the Primary Brand Licensor licensed in connection with any Products and Services or in conjunction with the Client Marks.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Change: an amendment to: (a) the scope, nature, volume or execution of the Products and Services under the Contract; or (b) any other term or schedule of the Contract.

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for agreeing a Change, as set out in Appendix 1 of these Standard Conditions.

Client: the person or firm who purchases the Goods or Services or Goods and Services from Kitlocker under the Contract.

Client IP: means all IPR owned by or licensed by the Client to Kitlocker.

Client Marks: means any that are specifically referenced in the Framework Agreement (if applicable) or the Quote.

Client Materials: all Client IP, Client Marks, marks, logos, documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided or licensed by the Client to Kitlocker in connection with the Order, including the items provided pursuant to the Order Confirmation in accordance with clause 8.1 (c).

Client Representative: means any employee, volunteer, director, coaching staff or agent, player, contractor or sub-licensee or other person who represents the Client for the purpose of any of the Client's public relations or promotional activities or wears clothing or uses equipment which is branded with the Client Marks or Primary Brand Logo during the Contract.

Client Specification: any specification for the Goods or Services, including any designs and logos that are required or licensed by the Client, that are included in the Order Confirmation.

Commencement Date: has the meaning given in clause 2.4.

Contract: the contract between Kitlocker and the Client for the supply of Goods or Services or Goods and Services in accordance with these Standard Conditions as set out under any agreement between the Client and Kitlocker including, if applicable, the contract under the Framework Agreement.

Contract Details: means the details set out in Section A of the Framework Agreement or if there is no Framework Agreement the details governing the price, quantity, description and delivery of Products and Services set out in any Quote.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

Deliverables: all items delivered as part of any Services including but not limited to artwork (excluding Client IP) documents, specifications (and not being the Goods) produced by Kitlocker for the Client.

Delivery Location: has the meaning given in clause 5.2.

Framework Agreement: an agreement headed using the phrase “Kitlocker’s Framework Agreement” in the title which contains terms and conditions entered into between Kitlocker and the Client which these Standard Conditions form part.

Force Majeure Event: any circumstance not within a Party’s reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack (including maritime), civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; and (g) interruption or failure of utility service including any labour or trade dispute, strikes, industrial action or lockouts; and Force Majeure Event shall include any such circumstances as listed in this definition which may affect any third party supplier;

Goods: the Products (as defined in the Framework Agreement) or such goods (or any part of them) as set out in the Order Confirmation.

Intellectual Property Rights (IPR): patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information

(including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Kitlocker: Kitlocker.com Limited registered in England and Wales with company number 06540423 whose registered office address is 6-8 Stevenson Way, Sheffield, South Yorkshire, England, S9 3WZ.

Kitlocker IP: means any IPR owned by or licensed by Kitlocker.

Kitlocker Materials: all materials, equipment, documents and other property of Kitlocker.

Order Confirmation: an order confirmation sent in writing by Kitlocker to the Client agreeing to fulfil a Purchase Order and confirming the Order Number of the Purchase Order.

Order Specification: any specification for the Goods and/or Services, including any Client Specification, that is set out or referred to in the Order Confirmation or otherwise agreed in writing by the Client and Kitlocker.

Primary Brand Licensor: means the licensor of the Primary Brand as set out in the Contract Details or Quote and varied from time to time in accordance with the Change Control Procedure

Purchase Order: the Client's order for the supply of Goods or Services or Goods and Services, as set out in the Purchase Order form or the Client's written acceptance of the Quote as the case may be.

Quote: the quotation setting out the price, specification, delivery dates and Primary Brand Licensor terms (if any) for the Goods and Services ordered by the Client and issued by Kitlocker

Service Level Agreement (SLA): the written agreement between the parties which sets out the agreed service levels for Goods and Services ordered.

Services: the services, including the Deliverables, supplied by Kitlocker to the Client as set out in the Order Specification.

Standard Conditions: the terms and conditions set out in the current version of this document (including the appendices) headed KITLOCKER STANDARD TERMS AND CONDITIONS OF BUSINESS FOR THE SUPPLY OF GOODS AND SERVICES as amended from time to time in accordance with clause 18.8.

Third Party IP: means any IPR owned or licensed by a Third Party.

Third Party: means any entity or person who is not a party to the Contract.

Warranty Period: on all Deliverables completed by Kitlocker a period of 6 months from the date of delivery or for all Goods manufactured by third parties such other date subject to such warranty conditions as specified in documents by such manufacturer as referred to in the Order Confirmation.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 These Standard Conditions shall govern all contracts for the supply of Goods and Services by Kitlocker to the Client. Where Kitlocker and the Client have entered into a Framework Agreement the terms and conditions of that Framework Agreement shall also apply to the Contract. In the absence of a Framework Agreement being in place these Standard Conditions alone shall govern the Contract between Kitlocker and Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Client shall raise a Purchase Order which shall specify the price (being the relevant Client Direct Price (under the Framework Agreement, if applicable, or the price set out in a Quote (if applicable)), specifications and quantities of the Products and shall include the Client's Purchase Order reference number. The Client shall send the Purchase Order to Kitlocker's Accounts Team. For the avoidance of doubt, no orders will be considered by Kitlocker without a corresponding Purchase Order.
- 2.3 Any Purchase Order constitutes an offer by the Client to purchase Goods or Services or Goods and Services in accordance with these Standard Conditions (and if the parties have entered into Kitlocker's Framework Agreement the Purchase Order is subject also to the terms and conditions of that Agreement).

- 2.4 Kitlocker shall confirm its acknowledgment of each Purchase Order by sending to the Client an Order Confirmation to the Authorised Email Address within five days of receipt of each Purchase Order at which point and on which date the Order is accepted. Kitlocker shall not be obliged to accept any Purchase Order for Products unless that Purchase Order complies with these Standard Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by Kitlocker and any descriptions of the Goods or illustrations or descriptions of the Services published on Kitlocker's websites or in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 Where there is any conflict or ambiguity between the terms and conditions contained in the Framework Agreement and these Standard Conditions, the order of priority shall be as follows:
- (a) a Special Condition;
 - (b) a term contained in the Contract Details (other than a Special Condition);
 - (c) a term contained in the Framework Agreement
 - (d) a term contained in these Standard Conditions
- The above applies to each term as varied from time to time under the Contract.
- 2.7 Any Quote given by Kitlocker shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9 The Client waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Client that is inconsistent with these Standard Conditions.
- 2.10 Each Purchase Order (whether for Product or Services) shall be part of the Contract and shall not form a separate contract to it.

3. Warranties

3.1 Each Party warrants to the other that it:

- (a) Is free and entitled to enter into the Contract and to perform the obligations by it and grant any rights to the other party under the Contract and that it has not entered into any agreement with any third party which might conflict with the terms of the Contract; and
- (b) is not aware of any dispute, claim, litigation and/or infringement which may impact on or affect the ability of that party to enter into and/or perform under the Contract; and
- (c) shall assist the other party in obtaining all licences and clearances which are necessary to enable the other party to exploit fully any rights granted by the party granting such rights; and
- (d) shall comply with all relevant rules and regulations whether imposed by national laws or any competent authority responsible, directly or indirectly, for the matters referred to in the Contract.

4. Goods

4.1 The Goods are described in the Order Confirmation.

4.2 To the extent that the Goods are to be manufactured in accordance with any Client Specification as ordered by the Client and included in the Order Specification, the Client shall indemnify Kitlocker against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Kitlocker arising out of or in connection with any claim made against Kitlocker for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Kitlocker's use of the Client Specification in the Order Confirmation. This clause 4.2 shall survive termination of the Contract.

4.3 Kitlocker reserves the right to amend the Order Specification if required by any applicable statutory or regulatory requirement, and Kitlocker shall notify the Client in any such event.

5. Delivery of Goods

5.1 Kitlocker shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, Kitlocker's order ID and relevant Client reference

number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) it states clearly on the delivery note any requirement for the Client to return any packaging material to Kitlocker. The Client shall make any such packaging materials available for collection at such times as Kitlocker shall reasonably request.
- 5.2 Kitlocker shall deliver the Goods to the Delivery Location set out in the Order Confirmation or such other location as the parties may agree (provided the Client has given timely notice of such change and it is accepted in writing by Kitlocker) at any time after the Goods are ready.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Kitlocker shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Kitlocker with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If Kitlocker fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Kitlocker shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Kitlocker with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Client fails to take delivery of the Goods at the Delivery Location within three (3) Business Days of Kitlocker notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Kitlocker's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Kitlocker notified the Client that the Goods were ready; and
 - (b) if applicable Kitlocker shall store the Goods until actual delivery takes place, and charge the Client for all related costs and expenses (including insurance).

- 5.7 Kitlocker may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate part of the applicable Purchase Order. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

6. Quality of Goods

- 6.1 Kitlocker warrants that on delivery, and for the Warranty Period, the Goods shall:

- (a) conform in all material respects with their description and any applicable Order Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); a

- 6.2 Subject to clause 6.3, if:

- (a) the Client gives notice in writing to Kitlocker within five (5) Business Days of discovering of the defect during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1; and
- (b) Kitlocker is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by Kitlocker) returns such Goods to Kitlocker's place of business at Kitlocker's cost,

Kitlocker shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 Kitlocker shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Client failed to follow Kitlocker's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Kitlocker following any drawing, design or specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of Kitlocker;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

- (f) the Goods differ from their description in the Order Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, Kitlocker shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 For the avoidance of doubt, where the Goods are either produced or manufactured to order or embellished with any Client logos the applicable Goods may not be exchanged, refunded or returned without written consent or manufacturing fault.

6.6 These Standard Conditions shall apply to any repaired or replacement Goods supplied by Kitlocker.

7. Title and risk

7.1 The risk in the Goods shall pass to the Client on completion of delivery.

7.2 Title to the Goods shall not pass to the Client until the earlier of:

- (a) Kitlocker receives payment in full (in cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of such sum; and
- (b) the Client resells the Goods, in which case title to the Goods shall pass to the Client at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as Kitlocker's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Kitlocker's behalf from the date of delivery;
- (d) notify Kitlocker immediately if it becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(d); and
- (e) give Kitlocker such information as Kitlocker may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Client.

- 7.4 Subject to clause 7.5, the Client may resell or use the Goods in the ordinary course of its business (but not otherwise) before Kitlocker receives payment for the Goods. However, if the Client resells the Goods before that time:
- (a) it does so as principal and not as Kitlocker's agent; and
 - (b) title to the Goods shall pass from Kitlocker to the Client immediately before the time at which resale by the Client occurs.
- 7.5 At any time before title to the Goods passes to the Client, Kitlocker may:
- (a) by notice in writing, terminate the Client's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Client to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

8. Supply of Services

- 8.1 Kitlocker shall supply the Services to the Client in accordance with the Order Specification in all material respects.
- 8.2 Kitlocker shall use all reasonable endeavours to meet any performance dates for the Services specified or referenced in documents referred to in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 Kitlocker reserves the right to amend the Order Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Kitlocker shall notify the Client in any such event.
- 8.4 Kitlocker warrants to the Client that the Services will be provided using reasonable care and skill.

9. Client's obligations

- 9.1 The Client shall:
- (a) ensure that the terms of the Order and any information it provides in any Client Specification are complete and accurate;
 - (b) Save to the extent that the parties have agreed otherwise in writing, the Client shall agree to provide to Kitlocker, or procure for Kitlocker, such:
 - (i) co-operation, support and advice;

- (ii) information and documentation; and
 - (iii) governmental, legal and regulatory licences, consents and permits,
- in all matters reasonably necessary to enable Kitlocker to perform its obligations under the Contract.
- (c) provide Kitlocker with such Client IP or any information and materials as Kitlocker may reasonably require in a timely manner in order to enable the supply of the Services, and ensure that such information is complete and accurate in all material respects;
- (d) prepare the Client's premises with appropriate space for the supply of Goods;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) Keep all Kitlocker Materials at the Client's premises in safe custody at its own risk, maintain Kitlocker Materials in good condition until returned to Kitlocker, and not dispose of or use Kitlocker Materials other than in accordance with Kitlocker's written instructions or authorisation;
- (g) comply with any Brand Guidelines; and
- (h) comply with any additional obligations as set out in the Order Confirmation.

9.2 If Kitlocker's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, Kitlocker shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Kitlocker's performance of any of its obligations;
- (b) Kitlocker shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Kitlocker's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Client shall reimburse Kitlocker on written demand for any costs or losses sustained or incurred by Kitlocker arising directly or indirectly from the Client Default.

10. Charges and payment

10.1 The price for Goods and/or Services:

- (a) shall be the price set out in the Order Confirmation or as agreed in writing between the parties; and
 - (b) unless otherwise stated shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Client.
- 10.2 The Client shall be liable for any customs, taxes, import charges on Goods unless agreed otherwise in writing.
- 10.3 Kitlocker reserves the right to increase the price of the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Kitlocker that is due to any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Order Specification.
- 10.4 In respect of Goods, Kitlocker shall invoice the Client on or at any time after despatch of Goods unless otherwise agreed in writing. In respect of Services, Kitlocker shall invoice the Client on completion of the Services or despatch the Deliverable (whichever is the earlier) unless otherwise agreed in writing.
- 10.5 The Client must notify Kitlocker in writing of any discrepancies in deliveries within five (5) Business Days of the issue of the invoice otherwise the invoice shall be considered as payable in full.
 - (a) The Client shall pay each invoice submitted by Kitlocker within 30 calendar days of the date of the invoice or in accordance with any credit terms agreed by Kitlocker and confirmed in writing to the Client; and
 - (b) time for payment shall be of the essence of the Contract.
- 10.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Kitlocker to the Client, the Client shall, on receipt of a valid VAT invoice from Kitlocker, pay to Kitlocker such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

If the Client fails to make a payment due to Kitlocker under the Contract by the due date, then, without limiting Kitlocker's remedies under clause 15, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.7 will accrue each day at 8% above the Bank of England's base rate per month or part thereof from time to time or the maximum rate allowed by law, whichever is lower.
- 10.7 Should any invoice or account become overdue Kitlocker's trade credit insurance partner,

(currently, Allianz Trade), may become actively involved in the collection of such debts, this may result in additional collection fees and charges which shall be added to the debt amount and interest shall be chargeable on any such outstanding amounts.

- 10.8 Allianz Trade, as our credit insurer, may pursue the recovery of unpaid invoices on our behalf.
- 10.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Intellectual Property Rights, Brand Guidelines and Indemnities

- 11.1 All Intellectual Property Rights in any Deliverables or arising out of or in connection with the Services (other than Intellectual Property Rights in any Client Materials or licensed by Third Parties) shall be owned by Kitlocker.
- 11.2 Subject to the terms of the Contract, Kitlocker grants to the Client, a fully paid-up, non-exclusive, royalty-free licence during the Term and throughout the Territory to use the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Products, Services and the Deliverables in its business.
- 11.3 With regard to use of the Primary Brand, Kitlocker shall pass on any rights it is permitted to grant by the Primary Brand Licensor.
- 11.4 Unless agreed in writing with prior approval the Client shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.5 The Client grants Kitlocker a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any Client Materials provided by the Client to Kitlocker for the Term of the Contract for the purpose of providing the Goods and Services and warrants that the receipt and use in the performance of the Contract by Kitlocker, its agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 11.6 Kitlocker acknowledges and agrees that any and all Client Materials are the sole property of the Client and that nothing contained in the Contract shall confer any right, title or licence upon Kitlocker in respect of the Client IP save as expressly stated herein.
- 11.7 If Kitlocker becomes aware that any of the Client IP are being infringed by any third party then it shall notify the Client promptly in writing and, if requested to do so by the Client, will assist and advise the Client on the most effective way of preventing such infringements and if necessary, comply with any reasonable requests of the Client (at the Client's expense) in any proceedings relating to the Client IP.

- 11.8 The Client acknowledges and agrees that any and all Kitlocker IP are the sole property of Kitlocker or Kitlocker's licensors and that nothing contained in the Contract shall confer any right, title or licence upon the Client and/or Client in respect of Kitlocker IP save as expressly stated herein.
- 11.9 If the Client or Client becomes aware that any of the Kitlocker IP are being infringed by any third party then the Client shall notify Kitlocker promptly in writing and, if requested to do so by Kitlocker, will assist and advise Kitlocker on the most effective way of preventing such infringements and if necessary, comply with any reasonable requests of Kitlocker (at Kitlocker's expense) in any proceedings relating to the Kitlocker IP.
- 11.10 The Client shall indemnify, defend and hold harmless Kitlocker, the Primary Brand Licensor, Kitlocker's licensees and each of their respective members, partners, directors, officers, employees, agents, consultants and representatives (Kitlocker, together with all the foregoing, the "Kitlocker Indemnitees") against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by Kitlocker arising out of or in connection with any claim brought against Kitlocker Indemnities arising from:
- (a) any actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of the Contract of the Client Materials;
 - (b) any of the Client's acts or omissions in connection with its performance under this Agreement, including without limitation as it relates to the distribution, sale and/or promotion of Products and packaging or marketing;
 - (c) any act or omission by the Client or any Client Representative or any customer or sub-contractor of the Client which if taken by the Client would have constituted a breach of any Brand Guidelines;
 - (d) the Client's breach of its data protection obligations under Appendix 1 of these Standard Conditions.
 - (e) the Client's breach of any of its promises, obligations, representations and/or warranties under the Contract;
 - (f) any act or omission by the Client or any Client Representative which if taken by the Client would have constituted a breach of the Contract by the Client; and/or
 - (g) the Client's gross negligence, willful misconduct and/or failure to comply with any law or regulation applicable to its performance under the Contract.

11.11 Client shall not settle any such claim without Kitlocker's prior written consent. For avoidance of doubt, the provisions of clause 11.10 and 11.11 shall survive expiration or termination of the Contract.

11.12 Kitlocker:

- (a) warrants that the receipt and use in the performance of the Contract by the Client, its agents, subcontractors or consultants of the Deliverables (except the Client Materials) shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by the Client arising out of or in connection with any claim brought against the Client, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of the Contract of the Deliverables except where the same is caused by the Client Materials or arise due to a breach or act or omission of the Client (including but not limited to a failure by the Client to follow the Brand Guidelines) or the Claim arises as consequence of such use by Kitlocker or any sublicensee of Kitlocker of any Third Party IP including any of the Primary Brand Licensor in accordance with the Client's instructions and/or relate to the use of any Client Materials.

12. Data protection

As set out in Appendix 1.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time during or after the expiry or termination of the Contract disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the

Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 3; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.4 Each Party (the “**Receiving Party**”) undertakes to:

- (a) maintain as secret and confidential all technical or commercial information obtained directly or indirectly from the other Party (the “**Disclosing Party**”) in the course of or in anticipation of the Contract and to respect the Disclosing Party's rights in relation to or in connection to the technical or commercial information;
- (b) use the same exclusively for the purposes of the Contract; and
- (c) disclose the same only to those of its employees, contractors and sub-licensees pursuant to the Contract (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Contract.

13.5 The provisions of Sub-clause 13.4 shall not apply to any information which the Receiving Party can demonstrate by reasonable written evidence:

- (a) was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal;
- (b) is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party;
- (c) is or becomes generally available to the public through no act or default of the Receiving Party or its agents, employees, affiliates or sub-licensees;
- (d) is required to be disclosed by the Receiving Party to the courts of any competent jurisdiction, or to any government regulatory agency or financial authority, provided that the Receiving Party shall:
 - (i) inform the Disclosing Party as soon as is reasonably practicable, and
 - (ii) at the Disclosing Party's request seek to persuade the court, agency or authority to have the information treated in a confidential manner, where this is possible under the court, agency or authority's procedures.

13.6 The Receiving Party shall procure that all of its employees, contractors and sub-licensees pursuant to the Contract (if any) who have access to any of the Disclosing Party's

information to which Sub-clause 13.4 applies shall be made aware of and subject to these obligations and shall have entered into written undertakings of confidentiality at least as restrictive as Sub-clauses 13.4 and 13.5 and which apply to the Disclosing Party's information.

14. Limitation of liability

- 14.1 Kitlocker has public, property and professional indemnity insurance cover in respect of its own legal liability for claims in the UK only:
- (a) Public liability – up to five million pounds sterling (£5,000,000)
 - (b) Product Liability – up to five million pounds sterling (£5,000,000).
 - (c) Property Damage – up to five million pounds sterling (£5,000,000)
 - (d) Professional Indemnity cover – up to one million pounds sterling (£1,000,000)
 - (e) Data Protection liability cover – up to one million pounds sterling (£1,000,000)
- 14.2 The limits and exclusions in this clause reflect the insurance cover Kitlocker has arranged and the Client is responsible for making its own arrangements for the insurance of any excess liability.
- 14.3 References to liability in this clause 14 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.4 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.5 Nothing in this clause 14 shall limit the Client's payment obligations under the Contract.
- 14.6 Nothing in the Contract shall limit any liability of the Client for any indemnity claims under clauses 11 (IPR, Brand Guidelines and Indemnities) of these Standard Conditions;
- 14.7 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

- (d) breach of section 2 for defective products under the Consumer Protection Act 1987.

14.8 Subject to clause 14.4 (no limitations in respect of deliberate default) and clause 14.7 (liabilities which cannot legally be limited) and clause 14.9, Kitlocker's total liability to the Client:

- (a) for damage to property caused by the negligence of its employees and agents in connection with the Contract shall not exceed the limit of insurance in 14.1 (b) (Property Cover) for any one event or series of events;
- (b) for loss arising from Kitlocker's failure to comply with its data processing obligations under the Agreement shall not exceed in aggregate for any one or series of claims under this clause up to £1,000,000;
- (c) for damage in respect of all other breaches by and indemnity claims against Kitlocker under the Contract shall not exceed the Cap;

In this clause 14.8:

- (i) **Cap.** The cap is the greater of £10,000 or 100% of the total charges paid or payable in the 12 months prior to the date when the breach occurred; and
- (ii) **Total Charges.** The total charges means all sums paid by the Client and all sums payable under the Contract in respect of goods and services actually supplied by Kitlocker, whether or not invoiced to the Client.

14.9 This clause 14.9 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 14.4 (no limitations in respect of deliberate default), clause 14.6 (liability under identified clauses) and clause 14.7 (liabilities which cannot legally be limited), clause 14.9 (c) identifies the kinds of loss that are not excluded and clause 14.9(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill;
 - (vii) loss of or damage to reputation; and

(viii) indirect or consequential loss.

(c) The following types of loss and specific loss are not excluded:

- (i) sums paid by the Client to Kitlocker pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract; and
- (ii) additional reasonable costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include reasonable consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials directly related to the replacements.

14.11 Kitlocker has given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.12 This clause 14 shall survive termination of the Contract.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

15.2 Without affecting any other right or remedy available to it, Kitlocker may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Client.

15.3 Without affecting any other right or remedy available to it, Kitlocker may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and Kitlocker if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(d), or Kitlocker reasonably believes that the Client is about to become subject to any of them.

16. Consequences of termination

16.1 On termination of the Contract:

- (a) the Client shall immediately pay to Kitlocker all of Kitlocker's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Kitlocker shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of Kitlocker Materials and any Deliverables or Goods which have not been fully paid for. If the Client fails to do so, then Kitlocker may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. Force majeure

17.1 Provided it has complied with sub-clause 16.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 17.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 17.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than two (2) Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two (2) weeks, the Party not affected by the Force Majeure Event may terminate the Contract by giving one (1) week's written notice to the Affected Party.

18. General

18.1 Assignment and other dealings

- (a) Subject to the following provisions of this clause, neither Party shall assign, mortgage, charge, sublicense or otherwise transfer any rights or obligations under the Contract without the prior written consent of the other Party.
- (b) Kitlocker may:
 - (i) assign all its rights and obligations under the Contract together with its rights in the Intellectual Property to any company which it transfers all or part of its assets or business, provided that the assignee undertakes to the Client to be bound by and perform the obligations of Kitlocker under the Contract; and
 - (ii) subcontract its obligations and rights to any of Kitlocker's distributors and licensees to allow Kitlocker to undertake its obligations and exercise its rights under the Contract.

18.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the contact email address used by the parties in the Order Confirmation or ordinary course of their dealings.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 Severance or invalidity. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause **18.3** the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 Waiver.

- (a) Except as set out in clause **2.9**, a waiver of any right or remedy is only effective if given in writing.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or

negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

18.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.8 Variation. Except as set out in these Standard Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

18.9 Announcements. Neither Party shall make any press or other public announcement concerning any aspect of the Contract or make any use of the name of the other Party in connection with or in consequence of the Contract, without the prior written consent of the other Party.

18.10 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Appendix 1: Data Protection

1. Definitions and interpretation:

In this Appendix, the following definitions shall apply where used throughout the Contract. All other definitions used but not listed in this section shall have the meanings as defined in Section B of the Framework Agreement.

“Data Protection Legislation”	means the UK GDPR, the Data Protection Act 2018, and all other applicable laws relating to the processing of personal data, as may be updated and amended from time to time and for the purposes of the Contract the terms personal data , data subject , processing , controller , processor and personal data breach shall have the meanings given to them in the Data Protection Legislation.
“Domestic Law: “	the law of the United Kingdom or a part of the United Kingdom.
“UK GDPR”	means the UK General Data Protection Regulation as defined in section 3(10) of the Data Protection Act 2018;

2. In performing the Services, Kitlocker will be processing personal data of data subjects who purchase from the Online Retail Store and by Client Direct Sales Channels.
3. The Parties agree that Kitlocker shall be acting as a controller in processing any such personal data under paragraph 1.2, and that nothing in the Contract is intended to create a relationship of controller and processor between the Parties.
4. Kitlocker shall:
 - a. process personal data under the Agreement at all times in accordance with its obligations under the Data Protection Legislation.
 - b. implement and maintain appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure; and
 - c. promptly notify the Client if a personal data breach occurs that affects the personal data processed in accordance with the terms of the Contract.
5. Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
6. The parties acknowledge and agree that, where the Client instructs Kitlocker to process Personal Data as a Processor on behalf of the Client, the provisions of paragraphs 8 a – i of this Appendix 1 will apply. The subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects are set out in the Annex below.
7. Without prejudice to the generality of paragraph 5, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Kitlocker for the duration and purposes of the Contract.
8. Without prejudice to the generality of paragraph 5, Kitlocker shall, in relation to any Personal Data processed as a Processor on behalf of the Client under the Contract:
 - (a) process that Personal Data only on the documented written instructions of the Client unless Kitlocker is required by Domestic Law to otherwise process that Personal Data. Where Kitlocker is relying on Domestic Law as the basis for processing Personal Data, Kitlocker shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Kitlocker from so notifying the Client;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the following conditions are fulfilled:
 - (i) Kitlocker has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies; and
 - (iii) Kitlocker complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Domestic Law to store the Personal Data;
- (h) not appoint sub-processors to process the Personal Data without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 8, at the Client's cost make such records available on reasonable request to the Client and allow for and contribute to audits and inspections,

and immediately inform the Client if, in the opinion of Kitlocker, an instruction infringes the Data Protection Legislation.

Annex: Data processing particulars

1	Subject matter:	[XXXXX]
2	Duration:	[For the duration of the provision of the Services under these Conditions].
3	Nature and purpose of the processing:	The nature and purpose of the processing will be: <ul style="list-style-type: none">• [XXXXX]
4	Categories of Data Subjects:	The categories of data subject whose Personal Data are processed are: <ul style="list-style-type: none">• [XXXXX]• [XXXXX]
5	Types of Personal Data:	The types of Personal Data processed for the purposes of the Services are: <ul style="list-style-type: none">• [XXXXX]

Appendix 2: Change Control Procedure

In this Appendix 2, the following definitions shall apply and where used throughout the Contract shall apply as defined here. All other definitions used but not listed in this section shall have the meanings as defined in Section B of the Framework Agreement (if applicable).

Change: an amendment to:

- a) the scope, nature, volume or execution of the Products and Services under the Contract; or

- b) any other term or schedule of the Contract.

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

1. CHANGE CONTROL

- 1.1 Either party may submit a written request for Change to the other party in accordance with this clause 0, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.
- 1.2 If the Client requests a Change:
 - (a) the Client will submit a written request to Kitlocker containing as much information as is necessary to enable Kitlocker to prepare a Change Control Note; and
 - (b) within seven (7) Business Days of receipt of a request, unless otherwise agreed in writing by the parties, Kitlocker will send to the Client a Change Control Note.
- 1.3 If Kitlocker requests a Change, it will send to the Client a Change Control Note.
- 1.4 A Change Control Note must contain sufficient information to enable the Client to assess the Change, including as a minimum:
 - (a) the title of the Change;
 - (b) the originator of the Change and date of request;
 - (c) description of the Change;
 - (d) details of the effect of the proposed Change on:
 - (i) the Products and Services;
 - (ii) any other term of the Contract;
 - (e) the date of expiry of validity of the Change Control Note; and
 - (f) provision for signature by the Client and Kitlocker.
- 1.5 If, following the Client's receipt of a Change Control Note pursuant to paragraph 1.2 or clause 1.3:
 - (a) the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend the Contract;

- (b) either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.

Each party will bear its own costs in relation to compliance with the Change Control Procedure.