

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

"Applicable Law"	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
"Conditions"	means Murrays' terms and conditions of sale set out in this document;
"Confidential Information"	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
"Contract"	means the agreement between Murrays and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
"Control"	has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and "Controls", "Controlled" and "under common Control" shall be construed accordingly;
"Customer"	means the named party in the Contract which has agreed to purchase the Goods from Murrays and whose details are set out in the Order;
"Force Majeure"	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; pandemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Murrays' or Murrays' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
"Goods"	means the goods set out in the Order and to be supplied by Murrays to the Customer in accordance with the Contract;
"Location"	means the address or addresses for delivery of the Goods as set out in the Order;
"Murrays"	means Paul Murray PLC trading as Murrays Health and Beauty a company registered in England and Wales with company number 01172728 whose registered office is at Wide Lane, Southampton, England, SO18 2FA;
"Order"	means an order for the Goods from Murrays placed by the Customer;
"Price"	has the meaning given in clause 3.1;
"Specification"	means the description provided for the Goods and their packaging set out or referred to in the Contract;
"VAT"	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and
"Warranty Period"	means Murrays warranty period applicable to the Goods which shall commence on completion of delivery.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a party includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

- 2.1 These Conditions apply to and form part of the Contract between Murrays and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Murrays otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of Murrays and the Customer respectively.
- 2.4 Each Order by the Customer to Murrays shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 2.5 The offer constituted by an Order shall remain in effect and capable of being accepted by Murrays for 14 Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.6 Murrays may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
 - 2.6.1 Murrays' written acceptance of the Order; or
 - 2.6.2 Murrays dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 2.7 Rejection by Murrays of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 Murrays may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
- 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Goods shall be as set out in the Order (the "Price").
- 3.2 The Prices are exclusive of:
 - 3.2.1 duties or taxes which may apply for export customers only, and
 - 3.2.2 VAT (or equivalent sales tax), if applicable.
- 3.3 The Customer shall pay any applicable VAT to Murrays on receipt of a valid VAT invoice, if applicable.

4 Payment

- 4.1 Murrays shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order.
- 4.2 The Customer shall pay all invoices:
 - 4.2.1 in full without deduction or set-off, in cleared funds by the end of the month following the date of each invoice; and
 - 4.2.2 to the bank account nominated by Murrays.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - 4.3.1 Murrays may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force, and
 - 4.3.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

Murrays may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

- 6.1 The Goods shall be delivered by Murrays, or its nominated carrier, to the Location on the date(s) specified in the Order.
- 6.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by Murrays or its nominated carrier (as the case may be).
- 6.3 Murrays may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.4 Delivery of the Goods shall be accompanied by a delivery note stating:
 - 6.4.1 the product numbers, type and quantity of the Goods in the consignment; and
 - 6.4.2 any special handling instructions.
- 6.5 Time of delivery is not of the essence. Murrays shall use its reasonable endeavours to meet delivery dates set out in the Order, but such dates

are indicative only. The Customer shall have no right of rejection and no right to terminate in respect of Murray's inability to meet such dates unless the parties reach an agreement to the contrary.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

8.1 Title to the Goods shall pass to the Customer once Murrays has received payment in full and cleared funds for the Goods.

8.2 Until title to the Goods has passed to the Customer, the Customer shall:

8.2.1 hold the Goods as bailee for Murrays;
8.2.2 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

8.2.3 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price;

8.2.4 not remove or alter any mark on or packaging of the Goods;

8.2.5 inform Murrays immediately if it becomes subject to any of the events or circumstances set out in clauses 13.1.1 to 13.1.4 or 13.2.1 to 13.2.11.

8.3 Notwithstanding clause 8.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 13.1.1 to 13.1.4 or 13.2.1 to 13.2.11 has occurred or is likely to occur.

8.4 If the Customer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Customer immediately prior to the resale.

8.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs Murrays, or Murrays reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 13.1.1 to 13.1.4 or 13.2.1 to 13.2.11, Murrays may:

8.5.1 require the Customer at the Customer's expense to re-deliver the Goods to Murrays; and

8.5.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

9 Warranty

9.1 Murrays warrants that the Goods shall for the Warranty Period:

9.1.1 conform in all material respects to the Order and the Specification; and
9.1.2 be free from material defects.

9.2 As the Customer's sole and exclusive remedy, Murrays shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 9.1, provided that the Customer:

9.2.1 serves a written notice on Murrays:
(a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
(b) in the case of latent defects, within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;

9.2.2 provides Murrays with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;

9.2.3 gives Murrays a reasonable opportunity to examine the defective Goods; and

9.2.4 returns the defective Goods to Murrays at the Customer's expense.

9.3 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any of the Goods that are replaced with effect from the date of delivery of the repaired or replaced Goods.

9.4 Murrays shall not be liable for any failure of the Goods to comply with clause 9.1:

9.4.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;

9.4.2 to the extent caused by the Customer's failure to comply with Murrays' instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;

9.4.3 to the extent caused by Murrays following any specification, instruction or requirement of or given by the Customer in relation to the Goods;

9.4.4 where the Customer modifies any Goods without Murrays' prior written consent or, having received such consent, not in accordance with Murrays' instructions; or

9.4.5 where the Customer uses any of the Goods after notifying Murrays that they do not comply with clause 9.1.

9.5 Except as set out in this clause 9:

9.5.1 Murrays gives no warranties and makes no representations in relation to the Goods; and

9.5.2 shall have no liability for their failure to comply with the warranty in clause 9.1 and all warranties and conditions (including the conditions implied by ss 13-15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10 Limitation of liability

10.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10.

10.2 Subject to clause 10.5, Murrays' total liability shall not exceed 100% of the total sums paid by the Customer for the Goods under the applicable Order for which the claim or claims arise.

10.3 Subject to clause 10.5, Murrays shall not be liable for consequential, indirect or special losses.

10.4 Subject to clause 10.5, Murrays shall not be liable for any of the following (whether direct or indirect):

10.4.1 loss of profit;

10.4.2 loss of data;

10.4.3 loss of use;

10.4.4 loss of production;

10.4.5 loss of contract;

10.4.6 loss of opportunity;

10.4.7 loss of savings, discount or rebate (whether actual or anticipated);

10.4.8 harm to reputation or loss of goodwill.

10.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

10.5.1 death or personal injury caused by negligence;

10.5.2 fraud or fraudulent misrepresentation;

10.5.3 any other losses which cannot be excluded or limited by Applicable Law.

11 Confidentiality and announcements

11.1 The Customer shall keep confidential all Confidential Information of Murrays and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

11.1.1 any information which was in the public domain at the date of the Contract;

11.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

11.1.3 any information which is independently developed by the Customer without using information supplied by Murrays; or

11.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

11.2 This clause 11 shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.

11.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

12 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such event causes a delay or failure in performance and when it ceases to do so and is obliged to keep the other party updated on a weekly. If the Force Majeure event continues for a continuous period of more than 14 days, the party not affected by the Force Majeure may terminate the Contract immediately by written notice to the other party.

13 Termination

13.1 Murrays may terminate the Contract at any time by giving notice in writing to the Customer if:

13.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;

13.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;

13.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 15 days after the date that Murrays has given notification to the Customer that the payment is overdue; or

13.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

13.2 Murrays may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

13.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

13.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Murrays reasonably believes that to be the case;

13.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

13.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

13.2.5 has a resolution passed for its winding up;

13.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

13.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;

13.2.8 has a freezing order made against it;

13.2.9 is subject to any recovery or attempted recovery of items supplied to it by a Murrays retaining title to those items;

13.2.10 is subject to any events or circumstances analogous to those in clauses 13.2.1 to 13.2.9 in any jurisdiction;

13.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 13.2.1 to 13.2.10 including giving notice for the convening of any meeting of

- creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 13.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle Murrays to terminate the Contract under this clause 13, it shall immediately notify Murrays in writing.
- 13.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Murrays at any time up to the date of termination.
- 14 Notices**
- 14.1 Any notice given by a party under these Conditions shall:
- 14.1.1 be in writing and in English;
- 14.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 14.1.3 be sent to the relevant party at the address set out in the Contract.
- 14.2 Notices may be given, and are deemed received:
- 14.2.1 by hand: on receipt of a signature at the time of delivery;
- 14.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 14.2.3 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- 14.2.4 by email on receipt of a delivery email from the correct address.
- 14.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 14.1 and shall be effective:
- 14.3.1 on the date specified in the notice as being the date of such change; or
- 14.3.2 if no date is so specified, ten Business Days after the notice is deemed to be received.
- 14.4 This clause 14 does not apply to notices given in legal proceedings or arbitration.
- 15 Cumulative remedies**
- The rights and remedies provided in the Contract for Murrays only are cumulative and not exclusive of any rights and remedies provided by law.
- 16 Time**
- Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 17 Further assurance**
- The Customer shall at the request of Murrays, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 18 Entire agreement**
- 18.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 18.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 18.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 19 Variation**
- No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
- 20 Assignment**
- 20.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Murrays' prior written consent, such consent not to be unreasonably withheld or delayed.
- 21 Set-off**
- 21.1 Murrays shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which Murrays has with the Customer.
- 21.2 The Customer shall pay all sums that it owes to Murrays under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 22 No partnership or agency**
- The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 23 Equitable relief**
- The Customer recognises that any breach or threatened breach of the Contract may cause Murrays irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to Murrays, the Customer acknowledges and agrees that Murrays is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 24 Severance**
- 24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 24.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 25 Waiver**
- 25.1 No failure, delay or omission by Murrays in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 25.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Murrays shall prevent any future exercise of it or the exercise of any other right, power or remedy by Murrays.
- 25.3 A waiver of any term, provision, condition or breach of the Contract by Murrays shall only be effective if given in writing and signed by Murrays, and then only in the instance and for the purpose for which it is given.
- 26 Compliance with law**
- The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 27 Conflicts within contract**
- If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.
- 28 Costs and expenses**
- The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).
- 29 Third party rights**
- 29.1 Except as expressly provided for in clause 29.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 29.2 Any Affiliate of Murrays shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.
- 30 Dispute resolution**
- 30.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 30.
- 30.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 30.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
- 30.3.1 Within five Business Days of service of the notice, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.
- 30.3.2 If the dispute has not been resolved within five Business Days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority) of each of the parties. The chief executives (or equivalent) shall meet within five Business Days to discuss the dispute and attempt to resolve it.
- 30.4 Until the parties have completed the steps referred to in clause 30.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.
- 31 Governing law**
- The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 32 Jurisdiction**
- The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).