

**SUPPLY TERMS & CONDITIONS FOR USA, AUSTRALIA &
INTERNATIONAL SUPPLIERS**

**FOR USE WHEN IMPORTING ITEMS DIRECTLY FROM AN
OVERSEAS SUPPLIER & PURCHASING FROM A LOCAL
SUPPLIER**

**52 Degree PTY LTD
ABN – 94 670 590 726
ACN – 670 590 726
trading as 52 Orange**

Name of Supplier:

GST Number:

(Enter for AU based Suppliers only)

Execution Date:

(52 Orange to enter date after signing at execution)

SAP No:

DSS No:

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SUPPLY AGREEMENT FOR USA, AUSTRALIA AND INTERNATIONAL SUPPLIERS

In unison, all parties concur that this written document delineates the stipulations under which Goods will be delivered, and further, that every Order placed by the Purchaser shall be subject to these specific Terms and Conditions.

Supplier:

Address:

OVERVIEW

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1. ACKNOWLEDGEMENT

1.1 With each instance that the Supplier accedes to an Order from the Purchaser (whether through written communication, delivery, or in accordance with clause 4.3), the Supplier willingly submits to the terms outlined within this document, as well as any other materials referenced herein and the Privileged Trading Accord.

[Explanatory note: These Terms and Conditions relate to the purchase of goods by 52 Orange from:
(a) suppliers based in USA and Australia; and
(b) suppliers based overseas in countries other than the USA and Australia. If the supplier is a supplier based overseas in a country other than the USA and Australia, the supplier should ignore all references to Australia GST and USA tax.]

1.2 The Supplier recognizes and concurs to the fact that the Purchaser carries no responsibility to request an Order or any quantity of Orders within a designated interval.

1.3 The Supplier concedes that the business agreements pertaining to Orders are detailed in a distinct & separate, confidential trading terms document ("Privileged Trading Accord") between the Customer and the Provider.

2. AGREEMENT AND INCONSISTENCIES

2.1 The contents of these Terms and Conditions, along with all referenced documents, prevail over any prior agreements, documents, or arrangements between the Supplier and the Purchaser regarding the provision of Goods. Any additional terms, such as those found on invoices or in acceptance of Orders, do not form a part of the agreement established in accordance with clause 1.1.

2.2 Should any incongruity arise between these Terms and Conditions, the Order, and the Privileged Trading Accord, the documents shall be interpreted in the following order of precedence:

- (a) these Terms and Conditions;
- (b) the Privileged Trading Accord;
- (c) the Order.

2.3 These Terms and Conditions can only be changed through a written contract signed by an authorized representative of each party, possessing an equivalent or higher level of authority as the signatory of these Terms and Conditions.

3. EDI

3.1

Should the Purchaser not indicate any specific requirements, it is imperative that the Supplier possess the ability to engage in electronic trading and EDI. It is also crucial that the Supplier commit to the following actions within a mutually agreed time frame:

- (a) Business to Business (“B2B”) EDI standards and electronic trading requirements as informed intermittently by the Purchaser;
- (b) support emerging Purchaser EDI standards as communicated and implemented intermittently; and
- (c) support industry standard product catalogues as adopted by Purchaser, for example EANnet.

3.2 The Supplier must participate and complete the Purchaser’s **B2B accreditation process**.

3.3 In the event that transmissions by EDI are delayed due to technical difficulties Orders may be given in writing at the Purchaser’s discretion.

4. ORDERS

4.1 Each Order is understood to encompass these established Terms and Conditions and comprises a proposition by the Purchaser to procure the Goods subject to these Terms and Conditions and the Privileged Trading Accord.

4.2 Orders will be sent and deemed to have been received by the Supplier at the time of end of each successful working week ending on every Friday and PI is received.

4.3 All Orders are subject to agreements made in the “Privileged Trading Accord”.

4.4 A modification of an Agreement will solely be effective for the Purchaser and the Supplier if the Agreement with the alteration has been reissued by the Purchaser and approved by the Supplier.

4.5 The Supplier is prohibited from making any substitutions in regards to the colors, sizes, trims, or other particulars of the Goods as specified in the Order or Specifications without the express written consent of the Purchaser.

5. DISTRIBUTION AND SALE OF THE GOODS

5.1 The Purchaser may distribute the Goods to and sell the Goods through 52 Orange, 52 Degree Pty Ltd or 52 Degree LLC .

5.2 The Purchaser may sell the Goods via its website and its associated promotion partners.

5.3 The Purchaser may sell the Goods to any third party in any location (including for resale by the third party).

6. SUPPLIER WARRANTIES

6.1 As the Purchaser accepts each Order and throughout the entire duration, the Supplier guarantees and confirms the following:

- (a) it has the capacity to enter into these Terms and Conditions and each Order on its sole behalf and on behalf of its Related Bodies Corporate (as applicable under these Terms and Conditions) and possesses the aptitude and authority to sell the Goods to the Purchaser;
- (b) it has the right to sell the Goods free from all hindrances, the Goods being sold are free from all hindrances, and that the Purchaser will enjoy quiet possession of the Goods;

(c) the Goods are secure and devoid of any defects or flaws, they possess an acceptable appearance, finish, and durability, meeting the standards set by 52 Orange , this includes cases where the product is software, or contains software, ensuring that they are free from any malware, viruses, worms, and other forms of destructive codes.

(d) the Goods are suitable to be sold for their customary function.

(e) the Goods' packaging and labeling abide by the Artwork provided by the Purchaser or developed by the Supplier, in accordance with Privileged Trading Accord and the Artwork is specifically tailored for the Purchaser in relation to the Goods.

(f) the Goods adhere to the Requirements, Regulations, and any technological benchmarks or classifications (including Quality Assurance Specifications) specified by the Purchaser;

(g) all information which the Supplier has provided to the Purchaser (for example instructions, warranties, product descriptions) in relation to the Goods is true, clear and accurate;

(h) in cases where the Goods are provided with reference to a sample, such Goods (and the manner in which they are tagged, branded, labeled, and wrapped) match the prototype in question;

(i) the Goods adhere to all pertinent legislation and recognized industry standards within the nation of origin as well as the destination or sales location, this encompasses all regulations and benchmarks concerning handling, security, production, storage, packaging, labeling (including claim specifications), tagging, loading, shipping, and country of origin;

(j) the Goods adhere to all mutually consented voluntary industry codes, in addition to any judicial or governmental mandate, and is not under scrutiny as per the regulations set forth by the Consumer Act in the origin of it's nation or any analogous authority in any other legislation, including relevant laws in the specific region in which the product is intended to be retailed, confirming its compliance with essential benchmarks;

(k) the act of importing, selling, or promoting the Goods by the Purchaser, or utilizing photographs, graphics, or text provided by the Supplier for advertising or marketing purposes, shall not violate any individual's Intellectual Property Rights or other rights and that the Supplier has diligently conducted all necessary investigations to ensure this, particularly in cases where the Goods (or any portion or element thereof, such as packaging or instructional manuals) are obtained from, manufactured, or produced by a third party;

(l) where the Goods are supplied to the Purchaser for importation, then the Goods will comply with the requirements set out under the laws in the location in which the

Goods are to be sold that confirm that the Goods meet such mandatory standards;

(m) in instances where the designated Purchaser is to take possession of imported Goods, said Goods are to conform to the standards stipulated by the laws of the territory where they are to be marketed, affirming their adherence to compulsory directives, additionally, the Supplier warrants that, to the best of its understanding, there are no current, pending, or imminent lawsuits, arbitration proceedings, investigations, inquiries, or other legal actions involving the Supplier that may potentially have an adverse impact on the Supplier's reputation, the Purchaser's reputation, or the fulfillment of the Supplier's duties as outlined in these Terms and Conditions; and

(n) the goods being exported and supplied to the Purchaser in the USA, Australia and internationally do not contain asbestos.

(o) the goods being exported and supplied to the Purchaser in the USA, Australia and internationally do not contain any biological and biohazardous materials (Live animals, animal carcasses, or animal products including tissues, cells, blood, or other bodily fluids. Pathogenic microorganisms (including human, animal, or plant pathogens) Plants, animals, insects, microorganisms, or cells that produce toxic compounds. Select Agents or Select Toxins.) that allow germination that has the potential to contaminate and/or can create infection by human contact.

6.2 Upon request, the Supplier must provide to the Purchaser independent test reports of all Goods that are subject to mandatory standards under the laws in the location in which the Goods are to be sold that confirm that the Goods meet such mandatory standards. All such

testing is to be at the cost of the Supplier.

6.3 The Supplier will not be liable for breach of any warranty under clause 6.1 to the extent that such breach is caused or contributed to by damage to the Goods following delivery to the Delivery Address or other acts or omissions of the Purchaser.

6.4 Except as set out in these Terms and Conditions, any condition, warranty, statement or undertaking as to the quality of the Goods or their fitness or suitability for any purpose howsoever or whenever expressed or which may be implied by statute or otherwise is hereby excluded, except to the extent that such exclusion is prevented by law.

7. PRICE

7.1 The Order explicitly outlines the price of the Goods, and by default, this includes all associated costs incurred by the Purchaser. These costs, while not limited to, encompass:

- (a) all taxes (including, without limitation, Federal Income Taxes for orders in USA and/or GST for Orders placed in Australia), levies and duties that are applicable in the country of manufacture and export;
- (b) all charges for labeling and packaging, packing, shipping, carriage, freight applicable to delivery of the Goods from the factory to the freight forwarder used to deliver the Goods, quarantine, commissions, assists, rebates, discounts (and any other consideration), testing and delivery to and off-loading of the Goods to the Delivery Address;
- (c) all insurance costs applicable to cover the Goods during manufacture and while in transit from the factory to the Delivery Address; and
- (d) all insurance costs incurred by the Supplier to comply with its obligations in clause 17.

8. PAYMENT AND INVOICING

8.1 In accordance with the stipulations outlined in Clause 1.1, the Supplier is exclusively permitted to issue an Invoice to the Purchaser either prior to or upon the delivery of the Goods, subject to these Terms and Conditions. Each Invoice must prominently display the Order number, the Purchaser's recognized EAN or GTIN, or the Purchaser's product keycode. The Supplier must adhere to all specifications communicated by the Purchaser concerning its invoicing criteria.

8.2 The Purchaser will pay the Invoice in accordance with the price specified on the Order and the quantity of the Goods shown on the Order, unless the Purchaser:

- (a) finds, upon inspecting the Goods pursuant to clause 16.2, that the quantity of the Goods received varies from the quantity shown on the Order; or
- (b) exercises its rights under clause 16. in which case the Purchaser will only be required to pay for the Goods that are received and fully comply with these Terms and Conditions (including the Order). This clause 8.2 does not limit any other rights or remedies available to the Purchaser.

8.3 The Supplier shall furnish, upon delivery or promptly thereafter, all necessary documents as requested by the Purchaser and/or outlined in the Privileged Trading Accord Private and 52 Orange's International Shipping Manual. Effectual delivery will only be recognized once all Commodities and required documents have been delivered correctly, and the specified payment timeline will not begin until the receipt of all Commodities and all necessary documents as outlined in 52 Degree ' Privileged Trading Accord, as well as any additional documentation reasonably requested by 52 Degree .

8.4 The Purchaser will only make payment for an Order when clause 8.3 and the Order and these Terms and Conditions have been complied with.

8.5 It is imperative that the Supplier maintains documentation of the Orders placed and the subsequent delivery of Goods for a minimum of 12 months from the date of delivery, in accordance with these Terms and Conditions. In certain cases, longer retention may be necessary in accordance with the law.

8.6 Invoices will be paid by the Purchaser on the settlement terms set out in the Confidential Trading Agreement, vendor registration form or such other written agreement between the parties and any rebates or discounts set out in any such document(s) will be deducted by the Purchaser from the remittance to the Supplier by set-off in accordance with clause 40.

9. AUSTRALIAN GST

9.1 Unless the context requires otherwise, this clause and clause 7.1(a) override all other provisions of this Agreement as regards the treatment of GST under the GST Act.

9.2 Unless the context requires otherwise, words and phrases used in this clause have the same meaning as those words and phrases have in the GST Act.

9.3 The Supplier and the Purchaser each acknowledge that at the time of entering this agreement that, to the extent required by the GST Act, they are registered for GST and will promptly notify the other party in writing if they cease to be registered for GST.

9.4 Subject to clause 9.5, for every taxable supply of Goods under this agreement, the Supplier will issue to the Purchaser a valid tax invoice. The Supplier acknowledges that payment for the Goods is conditional on the issue of a tax invoice.

9.5 The Supplier warrants that where applicable, any tax invoice it issues to the Purchaser in accordance with clause 9.4 will comply with the GST Act, and if any invoice fails to comply with the GST Act, then the Supplier will indemnify the Purchaser against any Loss resulting from that failure.

9.6 If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note will be issued as required by the GST Act and an appropriate payment will be made between the parties.

10. DUTIES OF SUPPLIER

10.1 The Supplier shall undertake and adhere to the Terms and Conditions at all times, specifically ensuring that it:

- (a) promptly execute all Orders accepted by it under clause 4.3;
- (b) arrange for advance production samples of the Goods to be forwarded to the Purchaser for approval prior to production of the ordered Goods if required by the Purchaser;
- (c) permits the Purchaser, or its authorized representatives, to conduct quality control and other checks and inspections of the ordered Goods with reasonable notice, as specified in the 52 Degree Pty Ltd or LLC Quality and Compliance Framework, in order to ensure compliance with quality assurance specifications outlined in the Privileged Trading Accord and other technical standards;
- (d) guarantees that the Goods meet all laws and industry standards in the country of manufacture and future sale, including regulations on care, safety, production, storage, packaging, labeling (including claims), ticketing, loading, transportation, and country of origin;
- (e) ensure the packaging and labelling of the Goods complies with the Artwork provided by the Purchaser to the Supplier or developed by the Supplier for the Purchaser in relation to the Goods;
- (f) Ensure the timely preparation and transmission, at the Supplier's expense, of all necessary shipping documents, including but not limited to invoices, packing notes/lists, and inspection certificates, warranty slips, to the Purchaser's designated representative or freight forwarder upon booking of cargo. All remaining documents must be forwarded before delivery. Any authorized changes to documentation due to quantity or price modifications must be promptly communicated to the Purchaser's designated representative or freight forwarder. The invoices should accurately reflect the Order placed by the Purchaser.

The Supplier will also review the shipping documentation to ensure that it meets the requirements of both the Purchaser or its nominated representative and the requirements of the customs and quarantine governmental departments in the final destination country of sale of the Goods;

- (g) In the event of any potential quality or quantity issues discovered during inspection or otherwise, the Purchaser must be promptly notified by the Supplier or vice versa.

(h) Inform the Purchaser of any delays or expected delays in the shipment of the Goods to the Delivery Address in a timely and thorough manner and

(i) Obtain all necessary licenses and permissions for the exportation and importation of the Goods from the country of origin and the final destination country of sale.

11. PACKING OF GOODS FOR DELIVERY

11.1 It is the Supplier's responsibility to ensure that the Goods are properly prepared for delivery and transport, adhering to the specifications outlined in the Order, Privileged Trading Accord, and the Purchaser's directions unless otherwise specified in the Privileged Trading Accord. Furthermore, all necessary actions must be taken to meet the carrier's regulations and mitigate any potential damage to the Goods during transit.

11.2 The Purchaser is not obligated in any way to return any packaging or packing materials to the Supplier, regardless of whether the Goods are accepted or not.

12. FREIGHT

12.1 The Purchaser is not responsible for freight except to the extent this is specified by the Purchaser in the delivery terms in the Order and/or Privileged Trading Accord.

12.2 Where the Supplier organises freight on behalf of the Purchaser then the Supplier must:

(a) do so in accordance with any Policies provided by the Purchaser to the Supplier;

and

(b) minimise all associated costs.

13. DELIVERY OF THE GOODS

13.1 The fulfillment of this Agreement requires the Supplier to transport and provide the designated Goods to the Delivery Address as specified: The fulfillment of this Agreement requires the Supplier to transport and provide the designated Goods to the Delivery Address as specified:

(a) By the "DLV CONS DATE" (referred to as the deliver to consolidator date) or, in the case of Suppliers based in Australia, the "delivery not after" date stated in the Order (or a later date authorized in writing by the Purchaser due to any unforeseen circumstances that may cause a delay in the Goods' production that the Supplier reasonably believes it cannot meet the original "DLV CONS DATE" or, in the case of Suppliers based in Australia, the "delivery not after" date as specified in the Order);

(b) labeled in accordance with the details specified in the Order, including a prominently displayed consignment note that contains the Order number, ASN, and all required invoices, packing notes, and inspection certificates for that particular order, all of which carry the Order number and Item Codes or EAN codes; and

(c) in accordance with all applicable procedures or other requirements specifically outlined by the Purchaser, either in writing or through any other means

13.2 Without delay, the Supplier is responsible for informing the Purchaser of any shortcomings or deficiencies in fulfilling their obligations to deliver Goods as per the specifications outlined in the Order.

13.3 In the event that the Supplier fails to comply with the provisions outlined in clause 13.1(a) by either delivering the Goods in a manner that deviates from the specified criteria or by failing to provide the quantity of Goods stipulated in an Order, the Purchaser reserves the right to promptly revoke the entire Order or any portion including a 1% reduction of the original price calculated daily until the order is fully delivered. The percentage is calculated by the amount that is delayed in the delivery.

13.4 In cases where the parties have reached an agreement, if by chance the Goods are to be sent in separate parts, the acceptance of the relevant Order will constitute a consolidated contract, rather than a divisible one.

13.5 In spite of the stipulations outlined in the Order, the Purchaser reserves the choice to acquire or receive the Goods at the Supplier's premises. The Supplier is obligated to ensure that the Goods conform to the following criteria:

(a) Readily available for collection at the prearranged time and manner, as agreed upon by both parties;

(b) Properly labeled as per the Order, with a conspicuous consignment note referencing the Order number, ASN, as well as all necessary invoices, packing slips, and inspection certificates, all of which cite the Order number and Item Codes or EAN codes;

(c) Prepared for collection in accordance with relevant procedures or other requirements communicated to the Supplier in writing or otherwise, provided that such procedures and requirements are reasonable and have been notified to the Supplier by the Purchaser.

14. DELIVERY FOR A SPECIAL EVENT

14.1 If the Purchaser requires Goods for a special event, such as a sale or other promotion and the Supplier has agreed to deliver the Goods ordered for the special event to the Delivery Address by the "DLV CONS DATE" specified in the Order or in the case of Suppliers based in Australia the Supplier has agreed to deliver the Goods to the Delivery Address between the "delivery not before" and "delivery not after" dates specified in the Order, then, if the Supplier believes that it may not be able to deliver the Goods on time and in such volumes as ordered, the Supplier must:

- (a) notify the Purchaser immediately;
- (b) provide the Purchaser with any information and assistance that is necessary or is reasonably requested by the Purchaser to lessen the damage the Purchaser is likely to suffer as a consequence, including damage to its reputation or damage arising from a breach of legislation (e.g. Competition and Consumer Act 2010 or the Australian Consumer Law and Fair Trading Act 2012); and Direct Overseas Supplier Terms and Conditions version May 2024
- (c) indemnify the Purchaser against all Loss in accordance with clause 22.1 incurred by the Purchaser as a consequence of the late, inadequate or non-delivery of the Goods.

14.2 Subject to any other rights of the Purchaser under these Terms and Conditions, on receipt of the information referred to in clause 14.1(b), the Purchaser will notify the Supplier in writing whether it will accept the Goods and, if so, on what terms.

15. PROPERTY AND RISK

15.1 Subject to clauses 15.2, 15.3 and 15.4 and unless otherwise agreed:

- (a) Ownership of the Goods is transferred to the Purchaser upon delivery to the Delivery Address or upon collection by the Purchaser or its agent. Additionally, the responsibility for any potential risks associated with the Goods is assumed by the Purchaser once they, or their agent, physically obtains possession of the Goods at the Delivery Address, or when the Goods are collected by the Purchaser or its agent pursuant to clause 13.5; and
- (b) risk in the Goods passes to the Purchaser when the Purchaser or the Purchaser's agent takes physical Possession of the Goods at the Delivery Address or on collection of the Goods by the Purchaser or its agent pursuant to clause 13.5.

[Explanatory note to clause 15.1(a) – 52 Orange must have title to the Goods to on-sell them, which may occur before we have paid your invoice.]

15.2 Where Goods are to be delivered by the Supplier direct to a customer of the Purchaser:

- (a) property in the Goods passes to the Purchaser upon delivery to the Delivery Address; and
- (b) risk in the Goods passes to the Purchaser when the Purchaser or the customer takes physical Possession of the Goods.

This clause 15.2 only applies where the Supplier is registered for Australia GST purposes under Australia Goods and Services Act 1985 and the customer is located in Australia

15.3 Where the Purchaser or its agent is to collect the Goods in accordance with clause 13.5:

- (a) any and all risks related to transportation of the Goods will be assumed by the Purchaser; and
- (b) delivery cannot and will not be considered complete until such time as the Goods have been collected by the Purchaser or their representative.

15.4 Where the Purchaser or its agent receives the Goods at the Delivery Address from the Supplier's carrier or agent:

- (a) all risks relating to transportation of the Goods to the Delivery Address will be borne by the Supplier; and
- (b) under no circumstances will delivery be deemed to have occurred unless and until

the Goods have been delivered to the Delivery Address.

15.5 Property in the Goods passing to the Purchaser in accordance with clause 15 will not relieve the Purchaser of its obligation under these Terms and Conditions to pay for Goods delivered in accordance with these Terms and Conditions.

15.6 The Supplier must not claim or register any interest (including any security interest) in the Goods.

16. RETURNED GOODS

16.1 The Purchaser may, upon obtaining physical Possession of Goods or at any time after it has inspected the Goods pursuant to clause 16.2, return Goods if the Purchaser reasonably considers that:

- (a) where the Goods have a use-by date, the use by dates are insufficient for distribution and re-sale by the Purchaser in the normal course of the Purchaser's business;
- (b) the Goods, components or ingredients thereof, safety, quality (including but not limited to being fit for their usual purpose, safe, free from defects or faults, being of acceptable appearance, finish, and durability), processes of manufacture, packaging, labelling, grade, storage or anything else done or agreed to be done in respect of the Goods do not comply with the Order, Policies, Specifications, Artwork (in the case of the packaging or labelling) provided by the Purchaser to the Supplier or developed by the Supplier for the Purchaser in relation to the Goods, or these Terms and Conditions; or
- (c) the Goods have been damaged in any way prior to the Purchaser or its agent taking Possession; or
- (d) clauses 24.5(b) or 24.5(c) (or both) apply; or
- (e) clauses 24.9(b) or 24.9(c) (or both) apply.

16.2 The Purchaser will not be deemed to have accepted any Goods until the Purchaser has had a reasonable time to inspect them following delivery to the Delivery Address or within a reasonable time after any latent defect in the Goods has become apparent.

16.3 Where the Goods are to be returned, the Supplier will collect the returned Goods from the Purchaser at the Supplier's risk and cost, unless otherwise agreed. Where the Purchaser has paid for the Goods (the "Paid Amount"), the Purchaser will:

- (a) If the Paid Amount is less than the amount owed to the Supplier by the Purchaser, the Purchaser shall fully offset the Paid Amount against the next scheduled payment to be made to the Supplier;
- (b) If the Paid Amount is greater than the amount owed to the Supplier by the Purchaser, the Purchaser shall offset the portion of the Paid Amount that is offsettable against the next payment to be made to the Supplier, and the Supplier shall, within the agreed upon period from being notified by the Purchaser, refund the difference between the amount offset and the Paid Amount
- (c) If there is no outstanding amount owed to the Supplier by the Purchaser, the Supplier shall fully refund the Paid Amount within the time period specified by the Purchaser.

16.4 If Goods are scheduled to be delivered in installments, the Purchaser has the option to return any or all of the items received without jeopardizing the contract established upon acceptance of the original order. This right extends to any subsequent installments accepted by the buyer.

16.5 In the event of a breach or misrepresentation in the Supplier's warranty or representation, or if the Goods do not comply with the specifications of the Order, the Purchaser reserves the right to demand the dispatch of replacement Goods, as agreed upon in writing between the parties, without prejudice to any other course of action.

16.6 The Purchaser cannot request a return of Goods if they do not meet the requirements outlined in the Order, Policies, Specifications, Artwork, or these due to any damage sustained by the Goods after their delivery to the Delivery Address, or negligence on the part of the Purchaser. The ability to request a return is not granted under these circumstances.

17. INSURANCE

17.1 The Supplier will take out and maintain an annual, worldwide General and Products Liability Policy of insurance with a reputable insurer (including coverage for all warranties in respect of the Goods under these Terms and Conditions) in the name of the Supplier and fully indemnifying the Supplier, to the fullest extent permitted by law, against liability for property damage, personal injury or death arising directly or indirectly out of Goods manufactured, distributed or sold by it with an annual cover of not less than US\$2 million, or the foreign currency equivalent, for any single occurrence and in the aggregate.

17.2 Where the Supplier is not the manufacturer of the Goods, the Supplier must also ensure that the manufacturer of the Goods has the insurance cover set out in clause 17.1. Failure or delay by the Supplier in complying with clause 17.2 will not relieve the Supplier of its obligations in clause 17.1.

17.3 The Supplier will ensure that all insurance policies taken out and maintained by the Supplier in accordance with this clause 17 do not contain any exemptions for liability that may arise solely from the Supplier's engagement in a contract, arrangement, or other legally binding agreement resulting in liabilities being incurred.

17.4 The Supplier must provide to the Purchaser, at the same time as it returns these signed Terms and Conditions, a certificate of currency in respect of the insurance referred to in clause 17.1 confirming that the insurance is in force. In addition, the Supplier must immediately provide a new certificate of currency to the Purchaser upon the expiry of any previously provided certificate of currency. No Goods or Orders will be exempt from this requirement.

17.5 Where applicable, the Supplier must make any notification to its insurer required under the GST Law to ensure that GST is not payable on a payment that may be made by an insurer in respect of any claim on an insurance policy required under these Terms and Conditions.

17.6 The Supplier is responsible for insuring the Goods against theft, Loss or damage until property in them has passed to the Purchaser.

17.7 The Supplier must provide a certificate or copy of the insurance that shows that 52 Degree Pty Ltd or LLC (depending where the product has been delivered to specific territory) is the beneficiary of such insurance for the amount of the product that has been ordered by the purchaser. This certificate can be an estimated value of the monthly or annually orders.

18. SAMPLES

18.1 In the event that the Goods is supplied in line with an authorized sample of reference, with or without specified terms, it is incumbent upon the Supplier to ensure that the goods delivered – along with any accompanying labeling, markings, tags, and packaging – adhere to the specifications outlined in the reference sample and the designated design (for packaging and labeling) provided to the Supplier by the purchaser, or uniquely crafted by the for the buyer's products.

18.2 In the case that the Purchaser requires payment for samples and or postage of such samples, the cost of sample and or postage will be deducted from the first order put in place by the Purchaser.

19. PRIVATE LABEL/ HOUSEBRAND

19.1 Section 19 of this Agreement solely pertains to cases in which the Supplier undertakes the design, production, or provision of their own branded or private label merchandise to the Purchaser. Under this agreement, private label goods refer to products furnished by a supplier authorized by the Purchaser, which are then marketed under a brand owned by the supplier or the Purchaser themselves. This clause also covers bulk products provided by the Supplier, which are sold without any branded packaging. Additionally, it includes exclusive branded products supplied solely to the Purchaser.

19.2 The Purchaser may provide Specifications in relation to the private label or house brand Goods to the Supplier.

19.3 The purchaser has the option to ask the supplier to create specifications for the product. Suppliers are also allowed to suggest their own specifications to the Purchaser. Any costs incurred during this process will be defined in written form and mutually agreed upon by both parties.

19.4 The Purchaser may furnish digital Artwork relevant to the exclusive brand or in-house products to the Supplier. Should the Supplier furnish the Purchaser with the technical criteria preferred by their designated printing partner, the Purchaser shall supply the Creations according to said specifications.

19.5 In the absence of a written agreement stating otherwise, the Supplier is responsible for covering all expenses associated with the creation of the Artwork done by the Purchaser, including any expenses incurred for printing and packaging. Prior to initiating any work on the Artwork, the Purchaser will inform the Supplier of the approximate costs for its development.

19.6 The Purchaser has the option to request the Supplier to create original Artwork on their behalf. Any expenses associated with this development will be the responsibility of the Supplier.

19.7 All copyright, design rights, and other Intellectual Property Rights surrounding the Artwork or Specifications bestowed upon the Supplier by the Purchaser will consistently remain the possession of the Purchaser.

19.8 The Supplier bestows upon the Purchaser full ownership of any and all copyrights, design rights, and other intangible intellectual property associated with any Artwork or Specifications created for the Purchaser, with immediate effect upon the establishment of said rights.

19.9 Upon request from the Purchaser, the Supplier must expeditiously return at the Purchaser's discretion, all Specifications and Artwork, and completely eradicate or destroy (depending on the Buyer's preference), any copies of the aforementioned specifications or artwork within the Supplier's possession or authority.

19.10 It is imperative that the Supplier handles the Specifications and Artwork bestowed upon them by the Purchaser or created by the Supplier on behalf of the Purchaser for the Goods, with strict adherence to the confidentiality obligations outlined in clause 28.

19.11 Subject to subclause 19.12, if the Goods are subject to the Therapeutic Goods Act 1989 ("the Act") or, where the Goods are supplied to the Purchaser for importation or retail sale in Australia, a Australian equivalent law, the Supplier will be deemed to be the sponsor for the purposes of that Act and the Supplier must:

- (a) comply with its obligations under the Act or any Australia law (as applicable), including any costs associated with being the sponsor; and
- (b) ensure that the Goods comply with the Act or any Australia law (as applicable).

19.12 If the Goods are:

- (a) subject to the Therapeutic Goods (Medical Devices) Regulations 2002 ("the Regulations"); and
- (b) sourced by the Purchaser directly from the Supplier; and
- (c) the Supplier does not have a business address in Australia, the Purchaser will be deemed to be the sponsor and the Supplier will be deemed to be the manufacturer for the purposes of the Act and Regulations (as applicable), and the Supplier must:
- (d) comply with its obligations under the Act and Regulations; and
- (e) ensure that the Goods comply with the Act and Regulations.

19.13

The Provider acknowledges and concurs that it will not, through these Terms and Conditions, acquire or assert any ownership or right, privilege, or stake in the Intellectual Property Rights of the Buyer.

20. PURCHASER BRANDING

20.1 Goods containing any Intellectual Property rights owned or licensed by the Purchaser ("Purchaser Branding") can only be marketed and produced for the Buyer, in quantities specified by the Purchaser.

20.2 The Supplier readily acknowledges and agrees that the Purchaser Branding of the Purchaser belongs solely and explicitly to the Purchaser or its licensor, as may be applicable. Any attempt by the Supplier to Claim any ownership or rights over the Purchaser Branding is strictly prohibited and must be avoided at all costs.

20.3 In addition to Clause 28, it is imperative for the Supplier to maintain the utmost confidentiality of any information pertaining to Purchaser Branding. Under no circumstances should such details be divulged to any external party, unless they are directly involved in the production of the Goods on behalf of the Supplier.

20.4 The utilization of Purchaser Branding by Suppliers is strictly limited to only providing Goods to Purchaser. Any other use is strictly prohibited.

20.5 The Goods shall feature any required copyright or Intellectual Property Rights notices designated by the Purchaser, asserting their ownership.

20.6 In the event where Goods bearing Purchaser Branding, the Supplier is required to procure written approval from the Purchaser prior to selling said Goods to a third party. The terms of such approval shall be dictated by the Purchaser. If and when said approval is granted, the Supplier must expunge all evidence of Purchaser Branding, as well as any mention of the Purchaser's trademarks, including but not limited to swing tickets, tags, badges, and all other labels, from the Goods before offering them for sale to a third party. The removal of such Purchaser Branding and references must satisfy the standards set by the Purchaser and be completed at the Supplier's expense.

21. CANCELLATION OF ORDERS

21.1 The Purchaser reserves the prerogative to annul an Agreement for non-received Commodities if:

- (a) clause 13.3 applies;
- (b) the Supplier is in breach of any of the terms of these Terms and Conditions and has failed to remedy that breach within 7 performance Days of receipt of notice from the Purchaser requesting it to do so;
- (c) the Commodities were not delivered in accordance with the agreed upon arrangement;;
- (d) an Insolvency Event occurs in relation to the Supplier or its assets; or
- (e) clause 31.2 (anti-bribery) applies.

Pursuant to sub-paragraph (a), an Order is deemed void once the "delivery not after" or "DLV CONS DATE" has elapsed, unless otherwise mutually agreed upon.

21.2 If an Order is cancelled under clause 21.1 the Purchaser is not liable to pay anything in respect of any Goods that have not been delivered before the time of cancellation. Cancellation does not affect any rights the Purchaser may have in relation to anything done or not done by the Supplier.

21.3 The Purchaser shall not be held liable for any Loss or Damage sustained by the Provider due to the revocation of the contract.

21.4 Should there be any cause for the Supplier to doubt its ability to fulfill the stipulations outlined in these Terms and Conditions, it is imperative for the Supplier to take the following measures:

- (a) Immediately notify the Purchaser in written form, providing a clear summary of its current status; and
- (b) Extend necessary support to the Purchaser in minimizing any potential damage that the Purchaser may face consequent to this situation.

22. SUPPLIER INDEMNITIES

22.1 The Supplier, in perpetuity, releases and indemnifies 52 Orange and its officers, directors, employees, agents, successors, and assignees against all Loss, incurred by the Purchaser, arising out of or in connection with any:

- (a) breach of the Order or these Terms and Conditions (including the Specifications or the Supplier's warranties in clause 6);
- (b) the late, inadequate or non-delivery of the Goods in the circumstances described in clause 14.1;
- (c) defects or faults or alleged defects or faults in the Goods;

- (d) any recall or withdrawal of Goods in accordance with clause 25;
- (e) Claim of infringement of any Intellectual Property Rights by any person in respect of the Goods (including their packaging or labelling or instruction manuals) or the use of photos, graphics or text provided by the Supplier to the Purchaser for marketing, advertising or promotion of the Goods;
- (f) failure by the Supplier to comply with its obligations under clause 29.1 (Privacy) or clause 28 (Confidentiality); and
- (g) subject to the maximum allowance permitted by applicable laws, any claims for damages made by a third party in relation to any losses suffered or incurred due to a flaw or malfunction in the purchased items shall be limited, except in cases where such losses directly result from the purchaser's own carelessness or intentional wrongdoing.

22.2 Any amount payable by the Supplier under clause 22.1 will include any GST payable by the Purchaser (where applicable).

22.3 In instances where a Related Body Corporate or other associated entity of the Supplier has served as the immediate past provider of the Goods ("Previous Supplier") to the Purchaser before the Supplier's engagement in these Terms and Conditions, the Supplier solemnly pledges that the indemnity stated in section 22.1 and clause 14.1(c) will encompass all Goods provided by the Previous Supplier, whether dispatched prior to or after the Supplier's adoption of the aforementioned terms. In addition to the aforementioned statement, the Supplier shall uphold any Claims asserted by the Purchaser pertaining to Goods procured from the Previous Supplier, including but not limited to Claims pertaining to rebates, oversights in pricing not previously noted, and Goods that have been returned or rejected by the Purchaser.

23. SAFETY

23.1 It is the responsibility of the Supplier to adhere to the 52 Orange Occupational Health and Safety Obligations, as well as any other safety and security policies that may be communicated to them periodically, during their presence on the Purchaser's premises or utilization of the Purchaser's equipment and property. This applies to both the Supplier themselves and any of their employees or subcontractors.

23.2 The 52 Orange Occupational Health and Safety Obligations are located under Supplier Safety at <https://suppliers.52orange.com.au/>

24. POLICIES AND ETHICAL SOURCING

24.1 The Supplier agrees and accepts that it will unfailingly abide by the Policies. Any changes or new Policies that pertain to the Supplier will be made available on the "supplier portal" by the Purchaser, or will be explicitly communicated to the Supplier, with a minimum period of 7 days for notice. The Supplier must register itself on the designated "supplier portal."

24.2 The Supplier agrees that it will at all times comply with the 52 Orange Ethical Sourcing Code and located under Ethical Sourcing Code & Program at: <https://suppliers.52orange.com.au/>

24.3 The Supplier confirms adherence to all applicable laws and regulations in each jurisdiction where the factories responsible for producing the Goods for any Order are located. If, as stated in clause 39.3, the Purchaser has consented to the Supplier's use of third-party facilities for significant or multiple operations (typically involving more than one function) in manufacturing and supplying the Goods (known as "Permitted Subcontractors"), the Supplier must ensure that these Permitted Subcontractors comply with all laws and regulations in the jurisdiction of their respective factories, including those related to labor, worker safety, and environmental protection..

24.4 The Supplier is required to have in place a compliance management system to guarantee:

- (a) compliance with applicable laws and regulations;
- (b) ensure conformance with the 52 Orange Group Ethical Sourcing Code;
- (c) identification and mitigation of compliance risks related to the Ethical Sourcing Code; and
- (d) continual improvement.

24.5 Upon receiving a request from the Purchaser, the Supplier is obligated to divulge factory information in the requested format pertaining to Permitted Subcontractors involved in the production of the Goods provided under any Order, in accordance with the terms specified by the Purchaser. The Supplier acknowledges that the Purchaser may opt to publicly disclose the names and locations of said factories as part of their commitment to promoting ethical sourcing and transparency in the production of their Goods. Failure on the part of the Supplier to comply with this request, or to provide adequate information within the designated time frame as requested by the Purchaser, may result in the following consequences:

- (a) cancel any or all Orders in respect of any Goods which have not then been delivered;
- (b) reject any Goods that have been delivered but which have not yet been paid for;
- (c) reject and return any Goods that have been delivered and paid for but not yet sold by the Purchaser in its normal course of business. The Supplier will provide a full refund for any such Goods returned; and/or
- (d) cease doing all business with the Supplier whether under these Terms and Conditions or some other arrangement.

24.6

The Supplier recognizes and accepts the existence of 52 Orange Ethical Sourcing Program, which serves to evaluate the adherence of suppliers and subcontractors to the regulations outlined in the 52 Orange Ethical Sourcing Code. Consequently, the Purchaser reserves the right to conduct audits, as detailed in the 52 Orange Ethical Sourcing Program, and inspect the factories responsible for manufacturing the Goods. The Supplier hereby agrees to fully cooperate with any audits, whether announced or unannounced, and/or verification of these audits and/or inspections of the factories producing the Goods included in any Order, in order to assess compliance with the 52 Orange Ethical Sourcing Code. The Supplier must ensure their full cooperation with these audits (and ensure that any Permitted Subcontractors also comply). These audits may be carried out by the Purchaser or a third party appointed by the Purchaser.

24.7 The Supplier recognizes and concurs that any justifiable expenses linked to a third-party scrutiny, necessitating the demonstration of adherence to the 52 Orange Ethical Sourcing Code, shall be borne by the Supplier, unless mutually consented to through written agreement.

24.8 In cases where the audit reveals shortcomings in the Supplier's (or Permitted Subcontractors') adherence to the 52 Orange Ethical Sourcing Code, the Supplier must promptly implement necessary remedial measures (or ensure that the Permitted Subcontractor does so) as directed by the Purchaser, within the stipulated deadlines.

24.9 In instances of significant violations of 52 Orange's Ethical Sourcing Code and/or if the Supplier fails to promptly address and rectify the issue, the Purchaser reserves the right to carry out any or all of the following actions:

- (a) cancel any or all Orders in respect of any Goods which have not then been delivered;
- (b) reject any Goods that have been delivered but which have not yet been paid for;
- (c) reject and return any Goods that have been delivered and paid for but not yet sold by the Purchaser in its normal course of business. The Supplier will provide a full refund for any such Goods returned; and/or
- (d) cease doing all business with the Supplier whether under these Terms and Conditions or some other arrangement.

24.10

Any and all factories engaged in the production of Goods, deemed as National Brand Goods at the discretion of the Purchaser, will not be bound by clauses 24.5 through to 24.9, pertaining to factory disclosure and third-party audits. Instead, it is imperative that the Supplier guarantees the implementation of an adequate ethical sourcing program in the factories where the National Brand Goods are manufactured, either by themselves or their approved subcontractors. Such a program must meet a minimum threshold of documented ethical sourcing standards (e.g. in the form of a code or policy that includes criteria equivalent to those stipulated in the 52 Orange Group Ethical Sourcing

Code), along with effective procedures to ensure compliance with these standards. This may include third-party audits, employee training, a worker hotline, and mechanisms for reporting.

24.11 Upon the inquiry of the Purchaser, the Supplier is obligated to reveal to the Purchaser details regarding the ethical sourcing initiative that encompasses the activities conducted at the facilities where the National Brand Goods are produced by the Supplier or its approved subcontractors. If, in the sole discretion of the Purchaser, the ethical sourcing program does not meet the standards specified in clause 24.10, the Purchaser maintains the prerogative to impose the obligations outlined in clauses 24.5 to 24.9 upon the Supplier.

24.12 To ensure clarity, if a Supplier provides both National Brand Goods and Goods that the Purchaser, at its discretion, deems not to be National Brand Goods, the stipulations outlined in clauses 24.5 through to 24.9 will still be enforced for the factories manufacturing non-National Brand Goods agreed upon by the Purchaser.

25. PRODUCT WITHDRAWALS AND RECALLS

25.1 In the event that the Supplier or Purchaser becomes cognizant of:

- (a) any imperfection, flaw or other circumstance, actual or potential, in any Product that the Purchaser has taken Possession of, which should not be made available for public sale due to a subpar health or safety risk; or
- (b) non-compliance of the Goods with relevant legislation (including obligatory labeling requirements); or
- (c) infringement or potential infringement of a third party's Intellectual Property Rights by the Goods; or
- (d) the Product being subjected to a voluntary or compulsory recall by a government regulator due to a defect, flaw or other circumstance in the Goods that pose a subpar health or safety risk; ("Threat") considering the nature and severity of the Threat, the concerned party must promptly notify the other party of:
- (e) the affected Goods, identified by Order numbers, invoice numbers/ASNs, product descriptions, batch codes, best before/use by date codes, APNs, Item Code numbers, quantities supplied, Possession date, and any other unique identifier;
- (f) the nature of the Risk; and
- (g) the measures taken or proposed to be taken by the notifying party in response to the Threat.

25.2 The notice referred to in clause 25.1 must be given in writing by email to the other party's nominated representative.

25.3 The parties shall cooperate to the fullest extent feasible in order to mitigate any potential risk to the general public posed by the Threat. This includes, but is not limited to, committing to the following actions:

- (a) terminating the distribution and/or halting the production of any Goods that may be affected by the Threat;
- (b) removing from the market any affected Goods that have not yet been offered for sale to the public;
- (c) adhering to all pertinent laws, regulations, and notification requirements pertaining to product recalls;
- (d) complying with requests from regulators during the recall process, including providing necessary information and progress updates;
- (e) fulfilling any conditions and carrying out corrective measures as instructed by the Purchaser in relation to the Threat;
- (f) recalling and facilitating the return of any affected Goods that have already been sold, and disposing of them in a safe and compliant manner, upon request by the Purchaser; and
- (g) implementing appropriate corrective measures, including disseminating information deemed necessary by the Purchaser, to minimize any potential harm, loss, or damage that may result from the Threat. This may include safely storing and disposing of recalled Goods.

26. ADVERTISING

During the process of marketing and promoting the Goods through any medium, the Purchaser is authorised to utilise photographs, illustrations, written content, brand names, and other materials furnished by the Supplier for the sole purpose of advertising and promoting the Goods, without incurring any expenses. However, the Purchaser must ensure that these materials are not employed in a misleading or defamatory manner.

27. PUBLIC STATEMENT

With the exception of clause 26, both parties must seek the other party's advance written approval before engaging in any form of advertising or publishing, authorizing a press release or any other public statement, or making any representation to a third party (including the general public) that pertains to these Terms and Conditions, the other party, or the discussions and transactions between the two parties.

28. CONFIDENTIALITY

28.1 Each party agrees to keep confidential all the other party's financial, technological (including designs and specifications), strategic or business information (including customer details) concerning or arising from these Terms and Conditions, 52 Degree Pty Ltd Data and Personal Information ("Information"). In particular, each party must ensure that all electronic communications are kept secure so as to prevent unauthorised access.

28.2 All Information remains the property of the disclosing party and may only be used by the receiving party in fulfilling its obligations under these Terms and Conditions. Otherwise, no Information may be disclosed by the receiving party to any third party without the disclosing party's written consent.

28.3 Each party otherwise agrees not to disclose any of the terms of these Terms and Conditions except to the extent that:

- (a) disclosure is necessary to comply with these Terms and Conditions or any other agreement between the parties;
- (b) the disclosure is required by law or rules of any stock exchange on which either party is listed; or
- (c) the Information is in the public domain other than through a breach of these Terms and Conditions.

28.4 Where a party believes that it is required by law to disclose any of the terms of an Order or these Terms and Conditions or any other confidential Information of the other party, the party must immediately notify the other party in writing and provide assistance as reasonably required by the other party if the other party wishes to defend or resist that requirement.

28.5 Upon request, each party must destroy or return to the other party (in a format acceptable to the other party) any copies of the Information in the party's possession in whatever medium, but in the case of electronic files containing Information such return is only to the extent that such copies can be readily extracted from any IT system on which such files are stored.

28.6 Nothing in this clause 28 will be construed to prevent the Purchaser from publishing the name and location of the Supplier's factories at which the Goods are manufactured, as set out in clause 24.5.

29. PRIVACY

29.1 In relation to any Personal Information disclosed to the Supplier by the Purchaser or otherwise accessed, collected or held by the Supplier in its performance of its obligations under these Terms and Conditions ("Relevant Personal Information"), the Supplier will comply with:

- (a) all Australian Privacy Laws (whether or not Supplier is bound by the Privacy Act);
- (b) all Australia Privacy Laws (as applicable); and
- (c) any applicable International Privacy Laws.

29.2 Without limiting its obligations under clause 29.1, the Supplier must:

- (a) use Relevant Personal Information only as necessary to fulfil its obligations under these Terms and Conditions;
- (b) only collect, access, use, store, disclose or otherwise deal with Relevant Personal Information as directed by the Purchaser (other than where such direction would cause the Supplier to be in breach of an applicable Australian Law or Australia Law (as applicable));
- (c) not disclose Relevant Personal Information except:
 - (i) to its Personnel to the extent necessary for fulfilling the Supplier's obligations under these Terms and Conditions;

- (ii) as required by Australian Law, Australia Law, or International Law, subject to the Supplier giving notice to the Purchaser promptly when it becomes aware that such a disclosure may be required; or
- (iii) with the express prior written consent of the Purchaser;
- (d) ensure that any person, including Personnel, to whom Relevant Personal Information is disclosed under these Terms and Conditions does not do or omit to do anything which, if done or omitted to be done by the Supplier, would constitute a breach of this clause 29 (Privacy);
- (e) obtain written agreement to comply with Privacy Laws and provisions having the same effect as this clause from all subcontractors to whom Relevant Personal Information is disclosed;
- (f) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause the Purchaser to breach or be taken to breach a Privacy Law;
- (g) take all reasonable steps to ensure that Relevant Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure, including undertaking any Personnel training as may be required;
- (h) notify the Purchaser as soon as practicable, and disclose to the Purchaser all relevant information, if the Supplier becomes aware of any breach or alleged breach of the Supplier's obligations under this clause or a Privacy Law, or there has been unauthorised access to or unauthorised disclosure of any 52 Orange Data, or if 52 Orange Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier must comply with any reasonable direction from the Purchaser with respect to remedying that breach, unauthorised access or destruction; and
- (i) take reasonable steps to ensure that Relevant Personal Information it uses or discloses to the Purchaser are up-to-date, complete and relevant.

30. PERSONNEL

30.1 The Supplier will:

- (a) ensure its Personnel are aware of the Supplier's obligations under clause 29 (Privacy);
- (b) comply, and ensure that its Personnel comply, with all reasonable directions of the Purchaser in relation to the Supplier's obligations under clause 29 (Privacy); and
- (c) adhere to all Policies and ensure that its Personnel also comply with them

31. ANTI-BRIBERY

31.1 Each party must:

- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the Criminal Code Act 1995 (Cth) (Australia), The Secret Commissions Act 1910 (Australia), the Foreign Corrupt Practices Act 1977 (United States), and the Bribery Act 2010 (United Kingdom) ('Relevant Requirements');
- (b) not give or offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;
- (c) have and maintain in place throughout the term of these Terms and Conditions its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- (d) not prepare, approve or execute any contract or other document or make any record in connection with these Terms and Conditions that the party knows, or ought to reasonably know, is false, inaccurate or misleading;
- (e) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the party in connection with the performance of these Terms and Conditions which will or may be in breach of the Relevant Requirements; and
- (f) in the case of the Supplier, procure, and shall be responsible for, the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with these Terms and Conditions on behalf of the Supplier or under its supervision or control.

31.2 Without limiting any other rights of a party at law or under these Terms and Conditions, if a party determines that the other party is in breach of or has breached the other party's obligation under clause 31.1, the non-breaching party may immediately cancel any existing but not yet fulfilled Orders and also cease doing all business with the other party whether under these Terms and Conditions or some other arrangement.

32. MODERN SLAVERY

32.1 The Supplier represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in the Supplier's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
- (b) to comply with all applicable employment and work health and safety laws;
- (c) to comply with all applicable statutory requirements relating to Modern Slavery;
- (d) to comply with applicable Modern Slavery reporting requirements including but not limited to the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2015 (UK) and legislation passed as a result of, or substantially similar to, the Modern Slavery Bill 2018 (Cth); and
- (e) to notify the Purchaser promptly upon becoming aware of any incident, complaint or allegation that the Supplier, or any entity in its supply chain, has engaged in Modern Slavery.

32.2 The Supplier shall have and maintain its own policies and procedures that are intended to ensure compliance with the warranties contained in clause 32.1.

32.3 The Supplier must not engage in Modern Slavery.

32.4 The Supplier acknowledges that the Purchaser has corporate reporting requirements with regard to Modern Slavery and, at the reasonable request of the Purchaser, it will confirm in writing that it has complied with its undertakings under this clause 32 and will provide any information reasonably requested by the Purchaser in support of such compliance.

32.5 Upon becoming aware of any actual, reasonably suspected or anticipated breach of clause 32, the Supplier must immediately provide written notice of the breach, giving full details of such breach, to the Purchaser.

33. RIGHT TO ENTER AND INSPECT PROPERTY

The Purchaser may, at any time (both prior to and upon obtaining physical possession of Goods) during business hours and upon providing reasonable advance notice, inspect the Goods, components and ingredients thereof and the processes of manufacture and packing, labelling, storage or transportation thereof. For this purpose, the Purchaser or its representative will have the right to enter any premises or vehicle where the Goods may be found. The Supplier will provide the Purchaser or its representative with reasonable assistance and access in any and all such inspections.

34. PURCHASER'S OBLIGATIONS

34.1 Where the Purchaser is the importer of the Goods into Australia or Australia, the Purchaser shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Goods into Australia or Australia.

35. AGENCY

35.1 Supplier acknowledges and agrees that the Purchaser enters into these Terms and Conditions on its own behalf and as agent for each member of 52 Orange that is nominated by the Purchaser who may enjoy the benefit of these Terms and Conditions from time to time and who may place orders with the Supplier from time to time for the Goods (each a "52 Degree Entity").

35.2 The Purchaser acknowledges that it is authorised by each 52 Degree Entity to enter into these Terms and Conditions on their behalf.

35.3 For the purposes of these Terms and Conditions, any Loss suffered by a 52 Degree Entity will be considered to be Loss suffered by the Purchaser.

36. FORCE MAJEURE

36.1 Any delay or failure of either party to perform its obligations shall be excused if the delay or failure is as a result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods storms, windstorms, explosions, riots, labour problems (including strikes, lock outs and slowdowns), natural disasters, epidemic, war, sabotage, court injunction or order; provided that written notice of such delay including the anticipated length of delay is given by the affected party to the other party as soon as possible after the event or occurrence. During the period of delay, the parties will be excused from their performance obligations until such time as the event or occurrence has passed.

36.2 Nothing in this clause shall be interpreted to release the Supplier from its obligation to indemnify the Purchaser under these Terms and Conditions, nor to release the Purchaser from its obligation to pay the Supplier for Goods delivered to the Purchaser up to the date of the event of Force Majeure in accordance with these Terms and Conditions.

37. DISPUTE RESOLUTION

37.1 If a dispute arises out of, under or in connection with an Order or these Terms and Conditions, the Purchaser and the Supplier will both use its reasonable endeavours to:

- (a) bring that issue to the other's attention as soon as possible, and no later than 24 months from when the issue first arises; and
- (b) resolve the dispute through discussion in good faith, and to promptly elevate it through senior levels or management as appropriate given the nature of the dispute.

37.2 If a dispute cannot be resolved by discussions between the parties, the dispute shall be submitted to arbitration for final and exclusive settlement.

37.3 All disputes arising out of or in connection with the Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and shall take place in Melbourne, Victoria, Australia. The seat of the arbitration shall be Melbourne, Victoria, Australia and or The State where the product was delivered into Australia, USA or any other country that 52 Degree and its subsidiary are conducting normal ethical business .

38. GOVERNING LAW

38.1 Except where clause 38.2 applies, the laws of the State of Victoria and Commonwealth of Australia govern these Terms and Conditions.

38.2 For Goods sold in Australia, these Terms and Conditions are governed by the law of Australia and the parties submit to the non-exclusive jurisdiction of the courts of Australia.

38.3 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions.

38.4 Despite anything else contained in this Agreement, the parties agree and acknowledge that the provisions of the Sale of Goods Act 1908 will not apply to this Agreement.

38.5 Subject to clause 6.1(l), despite anything else contained in this Agreement, the parties agree and acknowledge that they are both in trade, and that the Goods being supplied by the Supplier and acquired by the Purchaser are supplied or acquired in trade, and the provisions of the will not apply to this Agreement.

39. ASSIGNMENT AND SUBCONTRACTING

39.1 Except where the assignment is by a party to its Related Body Corporate, neither party may assign or purport to transfer, assign, or novate any of its obligations under an Order or these Terms and Conditions in whole or in part without the prior written consent of the other party. Each party will not unreasonably withhold or delay consent.

39.2 In the event that there is an assignment or transfer referred to in clause 39.1 other than an assignment by a party to its Related Body Corporate, without the consent of the Purchaser, the Supplier will continue to remain solely responsible for all acts and omissions of the new entity.

39.3 The Supplier must not subcontract the manufacture and/or supply of the Goods or use any factory to perform a major or multiple operations (more than one function) in relation to the manufacture/supply of the Goods without the prior written consent of the Purchaser.

Consent to subcontract may only be given if the Supplier confirms in writing that it has a contract or arrangement in place with the subcontractor which includes the following requirements:

(a) the subcontractor will comply with 52 Orange's Ethical Sourcing Code;

(b) the subcontractor's standards of conduct are accepted as good industry practice;
and

(c) the subcontractor will comply with the Relevant Requirements.

39.4 The Supplier will remain responsible for any and all acts or omissions of the sub-contractor.

39.5 The Supplier acknowledges that a deemed assignment of these Terms and Conditions will occur, if:

(a) the Supplier sells or agrees to sell the business through which it supplies the Goods;
or

(b) if the Supplier is a body corporate, a Change of Control occurs, or occurs in respect of the party that Controls the Supplier. In the event that either paragraphs (a) or (b) above apply, the Supplier will continue to honour all Claims made by the Purchaser in relation to the Goods supplied by the Supplier prior to the events in paragraphs (a) or (b) occurring (including Claims relating to rebates, cost errors not previously claimed and Goods returned or rejected by the Purchaser)) and indemnify the Purchaser against all Loss, liability, damages, costs (including legal costs on a solicitor and own client basis) and all expenses incurred by the Purchaser in connection with such Claims or, if the Supplier has transferred its rights and obligations under these Terms and Conditions to a third party as a consequence of the events in paragraph (a) or (b), the Supplier will ensure that such third party honours all such Claims and indemnifies the Purchaser. The Supplier further acknowledges and agrees that if such a third party fails to honour and indemnify in accordance with this clause, the Supplier will honour such Claims and indemnify in accordance with this clause.

40. SET OFF

40.1 The Purchaser agrees that the account between the Purchaser and the Supplier is a running account.

40.2 For Claims relating to rebates, discounts or other amounts under the Privileged Trading Accord, the Supplier acknowledges that by signing the Privileged Trading Accord, the Supplier has consented to the Purchaser setting off such amounts against amounts the Purchaser owes to the Supplier without further notice to the Supplier.

40.3 For Claims under the 52 Orange standard form Supplier Returns Agreement, the Supplier acknowledges that by signing such agreement, the Supplier has consented to the Purchaser setting off such amounts against amounts the Purchaser owes the Supplier without further notice to the Supplier.

40.4 For Claims relating to short deliveries of Goods and discrepancies between the invoiced price and the Prices in the Order for the Goods, the Purchaser may set-off such amounts against amounts the Purchaser owes to the Supplier without further notice to the Supplier.

40.5 For any other Claim that does not fall within clause 40.2 or clause 40.3 or clause 40.4, the Purchaser may only conduct a set-off with the prior written consent of the Supplier.

40.6 If the amount in the running account is insufficient to allow the Purchaser to conduct the setoff referred to in clauses 40.2 or 40.3 or 40.4 or 40.5 in full, the Purchaser will set-off an amount equal to the funds available in the running account and the Supplier will, within 7 days or such other time as agreed by the Purchaser, refund to the Purchaser the difference between the amount set-off and the amount owed by the Supplier to the Purchaser.

41. WAIVER

41.1 If the Purchaser accepts any Goods or approves any sample, this does not extinguish any of the Purchaser's rights if the Goods do not comply with these Terms and Conditions or any other provision of an Order.

41.2 Failing to insist on strict performance of any condition is not a waiver of any later breach or default.

41.3 A waiver is not valid or binding on the party granting that waiver unless made in writing.

42. SEVERABILITY

If any part of these Terms and Conditions are found to be invalid or of no force or effect under any applicable laws, executive order, regulations of any government authority having jurisdiction, or by a court or competent authority these Terms and Conditions will be construed as though such part had not been inserted herein and the remainder of these Terms and Conditions will retain its full force and effect.

43. SURVIVAL

Any obligations in these Terms and Conditions which by their nature are of a continuing nature or which are not fully satisfied and discharged will not merge upon termination of an Order.

44. GIVING OF NOTICES

44.1 Other than as explicitly provided for by these Terms and Conditions, a notice required by these Terms and Conditions must be in writing and must be either hand delivered or sent by prepaid post or facsimile to the address or facsimile number last notified by the addressee.

44.2 A notice takes effect from the time it is received unless a later time is specified in it.

44.3 Notices are taken to be received:

- (a) if delivered, at the time of delivery;
- (b) in the case of a posted letter, on the fifth day after posting; and
- (c) in the case of a facsimile, at the time indicated on the transmission report by the machine sending the facsimile indicating (in the absence of manifest error or tampering) that the facsimile in its entirety was sent to the facsimile number of the recipient.

45. RELATIONSHIP BETWEEN PARTIES

The Supplier acknowledges that it is an independent contractor to the Purchaser for the supply of Goods. The Supplier is not the Purchaser's employee or agent. Neither party may make any representations on the other party's behalf, or enter into any commitment, agreement, contract, arrangement or understanding on the other party's behalf.

46. DEFINITIONS

In these Terms and Conditions, the following terms have the corresponding meaning:

"APN" means Australian product number.

"APPs" means the Australian Privacy Principles and any new or replacement privacy principles included in the Privacy Act.

"Artwork" includes, without limitation, graphic or other design specifications and labelling or packaging specifications for the Goods.

"ASN" means Advance Ship Notice.

"Australian Laws" means all laws (including the common law and statutory laws), regulations, orders, subordinate legislation, ministerial directions or directions of regulators in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government.

"Australian Privacy Laws" means the Privacy Act (including the APPs), the Spam Act 2003 (Cth) and any other requirement under Australian Law or industry code relating to the handling of Personal Information.

"Business Day" means a day on which banks are open for business in the location where the Supplier manufactures or otherwise obtains Goods to fulfil Orders from the Purchaser, excluding Saturday, Sunday or public holidays in the location where the Supplier manufactures or otherwise obtains Goods to fulfil Orders from the Purchaser.

"Business to Business EDI" is the reference used by the Purchaser to describe the business

process adopted by the supply chain to order, receive and pay for goods delivered into the distribution centres.

“Change of Control” means a change in the identity of a person who as at the date of these Terms and Conditions is able to Control an entity (including a corporation defined in the Corporations Act and where the Goods are supplied to the Purchaser for importation or retail sale in Australia a company as defined in the Companies Act in Australia).

“Claim” means any action, demand, claim or proceeding whether arising under contract, tort, equity, negligence or otherwise.

“Companies Act” means the Companies Act 1986 Australia.

“Control” of an entity includes the definition of “Control” in section 50AA of the Corporations Act (and where the Goods are supplied to the Purchaser for importation or retail sale in Australia the definition of Control in section 7 of the Companies Act in Australia) and in the case of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.

“Corporations Act” means the Corporations Act 2001 (Cth of Australia).

“Delivery Address” means the Purchaser’s nominated freight forwarders’ address or other address notified (with reasonable notice) by the Purchaser in writing to the Supplier, including in an Order.

“EAN” or “GTIN” have the meanings given by EAN Australia.

“EDI” means electronic data interchange.

“Goods” means goods or services as described in an Order (or any part or instalment thereof) and includes samples, packaging and labelling and any accessories, instruction manuals, documentation or publication accompanying the Goods.

“GST” either has the meaning given by Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes any similar tax imposed under a Commonwealth, State or Territory law in place of GST or (as the context requires) means goods and services tax levied under the GST Act, at the rate prevailing from time to time, including any tax levied in substitution for such tax, but excluding any penalties or interest payable in respect of such tax.

“GST Act” means the Goods and Services Tax Act 1985 (Australia).

“GST Law” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time.

“Insolvency Event” means a party:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller (as defined in the Corporations Act or analogous person appointed to it or any of its property);
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts as they fall due or where the other party believes on reasonable grounds to be insolvent;
- (e) taking any step that is reasonably likely to result in the person becoming insolvent under administration (as defined in section 9 of the Corporations Act);
- (f) proposing to enter or entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (g) any analogous event under the laws of any jurisdiction, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party (which approval is not to be unreasonably withheld).

“Intellectual Property Rights” means trade mark, business name, patent, registered design, copyright, artistic work, design right, topography right, application to register any of the above rights, trade secret, inventions, product or business concepts, unpatented know-how and right of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world and whether now or in the future existing and whether arising under statute, contract or otherwise.

“International Laws” means all applicable laws (including the common law and statutory laws), regulations, orders, subordinate legislation, ministerial directions or directions of regulators in force from time to time in any jurisdiction the Supplier operates.

“International Privacy Laws” means the laws concerning privacy or data protection applicable to the Supplier in any jurisdiction the Supplier operates.

“Invoice” means a Tax Invoice or an Advance Shipping Notice (ASN), as the case may be.

“Item Code” means the Purchaser’s identification code for the Goods.

“52 Orange Data” means all data, information, text, drawings or other materials, embodied in any electronic or tangible medium that is disclosed, accessed or made available to Supplier, or in the case of Personal Information, that is collected by Supplier, or disclosed, accessed or made available to Supplier in the performance of its obligations under these Terms and Conditions.

“52 Orange Entity” has the meaning given to that term in clause 35.1.

“52 Orange Ethical Sourcing Code” means the minimum requirements and expectations that all Suppliers, including sub-contractors engaged by Suppliers, must meet in order to do business with the Purchaser (as amended from time to time) as set out at the website..

“52 Orange Ethical Sourcing Program” means the program developed by the Purchaser to measure compliance with the Ethical Sourcing Code by Suppliers (including sub-contractors engaged by Suppliers).

“52 Orange Group” means the Purchaser and its Related Body Corporates.

“52 Orange Occupational Health and Safety Obligations” means the safety obligations for contractors and demonstrators on Purchaser’s premises set out on the website..

“Loss” means any cost, expense, loss, damage, injury or liability (including reasonable legal costs and disbursements on a full indemnity basis, store and distribution centre handling costs, freight, import or customs duty or landing charges in Australia or Australia, disposal of stock costs).

“Modern Slavery” means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery like exploitation as prohibited or defined as a modern slavery offence under all applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the Criminal Code Act 1995 (Cth) (specifically Schedule 1 Divisions 270 and 271), the Modern Slavery Act 2018 (NSW) (specifically section 5(1) and Schedule 2), the Modern Slavery Act 2015 (UK) (specifically sections 1, 2 and 4), and legislation passed as a result of, or substantially similar to, the Modern Slavery Bill 2018 (Cth). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

“National Brand Goods” are goods carrying a brand which is internationally or nationally known and which is not owned, exclusive to, or licensed by the Purchaser.

“NZPPs” means the Australian Privacy Principles and any new or replacement privacy principles included in the Privacy Act 1993.

“Australian Laws” means all laws (including the common law and statutory laws), regulations, orders, subordinate legislation, ministerial directions or directions of regulators in force from time to time in Australia

“Australian Privacy Laws” means the Privacy Act 1988 and any other requirement under Australian Law or industry code relating to the handling of Personal Information.

“Order” means any electronic or other order by the Purchaser to the Supplier to purchase Goods from the Supplier.

“Personal Information” has the same meaning as in the Privacy Act or the Australian Privacy Laws, as the case may be.

“Personnel” mean the employees, partners, agents, directors and officers of the Supplier, and of its subcontractors and Related Bodies Corporate.

“Policies” means the policies listed in Schedule 1 and any updates or changes to those policies or additional policies published by the Purchaser on the Purchaser’s “supplier portal”, or notified by the Purchaser to the Supplier, such notice to not be less than 7 days.

“Possession” means where the Purchaser takes physical possession at the Delivery Address following delivery by the Supplier or Purchaser’s agent.

“Previous Supplier” has the meaning given to that term in clause 22.3.

“Privacy Act” means the Privacy Act 1988 (Cth) (including the APPs).

“Privacy Laws” means Australian Privacy Laws and International Privacy Laws.

“Purchaser” means 52 Degree Pty Ltd ABN 73 004 700 485 and 52 Degree LLC trading as 52 Orange, and any 52 Orange Entity.

“Quality Assurance Specifications” means any legal or other standards or requirements relating to the quality of the Goods specified by the Purchaser either in these Terms and Conditions or otherwise in writing.

“Related Body Corporate” has the meaning given to that term under section 50 of Corporations Act and, where the Goods are supplied to the Purchaser for importation or retail sale in Australia, has the meaning given to the term Related Company in the Companies Act 1986 and Related Body Corporates or Related Companies (as the case may be) has a corresponding meaning.

“Relevant Requirements” has the meaning given to that term in clause 31.1(a).

“Supplier” means the Supplier named on page 1 of these Terms and Conditions and includes its successors and permitted assigns. Any reference to Vendor in an Order, Policy or related documentation will be taken to be a reference to the Supplier.

“Specifications” means any technical or other specifications or standards relating to the Goods as specified either in these Terms and Conditions or otherwise in writing.

“Tax Invoice” has the meaning given by Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

“Taxable Supply” has the meaning given by Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

“Terms and Conditions” means these Terms and Conditions (including the Schedules) and any variations agreed by the parties thereto.

47. INTERPRETATION

47.1 In these Terms and Conditions (including any Order), unless the context otherwise requires, if a Related Body Corporate of the Supplier performs an obligation of the Supplier, that Related Body Corporate and the Supplier are deemed to be jointly and severally bound in respect of that Order, right or obligation, including any associated warranties or Claims.

47.2 Any reference in these Terms and Conditions to “writing” includes an electronic communication and “written” is to be interpreted accordingly.

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47.3 A reference to “dollars” or “\$” is to an amount in USD currency (unless otherwise specified).

47.4 “Includes”, “including” and other similar expressions are not words of limitation.

47.5 A reference to law means common law, principles of equity, and laws made by parliament (and laws made by parliament include laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

47.6 Any reference to or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

47.7 A reference to a Schedule is to a schedule attached to the body of these Terms and Conditions.

47.8 Where a document published on a website forms part of these Terms and Conditions, the Supplier is bound by the version published at the time the Supplier enters into these Terms and Conditions or commences trading with the Purchaser, and by any future changes made to that document from time to time as published on the website. If the Supplier objects to any changes, the Supplier will notify the Purchaser:

- (a) of the Supplier’s objection and the Purchaser will consider it and may mutually agree (each acting reasonably) in writing to an amended version of the relevant document to apply as part of these Terms and Conditions; or
- (b) that the Supplier does not wish to continue to supply Goods to the Purchaser under these Terms and Conditions.

SCHEDULE 1 – POLICIES

The following 52 Orange policies, documents and other process documents are located on the 52 Orange Supplier website at <https://suppliers.52orange.com.au/>

- 52 Orange Occupational Health and Safety
- 52 Orange Ethical Sourcing Code
- 52 Orange Ethical Sourcing Program
- 52 Orange Supplier Returns Agreement
- Supplier Safety – Contractor Online Induction

Acts

- Therapeutic Goods Act 1989
- Competition and Consumer Act 2010
- Australian Consumer Law and Fair Trading Act 2012
- Companies Act 1986
- Corporations Act 2001
- Consumer Guarantees Act 1993
- Privacy Act 1988
- (Goods and Services Tax) Act 1999
- Criminal Code Act 1995 (Cth)
- Modern Slavery Act 2018 (NSW)
- Modern Slavery Act 2015 (UK)
- Modern Slavery Bill 2018 (Cth)
- Criminal Code Act 1995 (Cth) (Australia)
- The Secret Commissions Act 1910 (Australia)
- Foreign Corrupt Practices Act 1977 (United States)
- Bribery Act 2010 (United Kingdom)
- Sale of Goods Act 1908
- B2B accreditation process

EXECUTED as an agreement on the day of....

SIGNED for and on behalf of 52 Degree PTY LTD by an authorized officer:

Signature: _____

Name: _____

Position:

Regional Merchandise Manager/Divisional Merchandise Manager/General Manager/Business Manager

Date: ____/____/20____

SIGNED for and on behalf of 52 Degree PTY LTD trading as
52 Orange by an authorized officer:

Signature: _____

Name:

Position: Regional Merchandise Manager/Divisional Merchandise Manager
/General Manager/Business Manager

Date: _____ / _____ /20 _____

SIGNED for and on behalf of

("Supplier") by an authorized officer:

Signature: _____

Name

Position:

Date: _____ / _____ /20 _____