



Terms and Conditions – Goods and Services

These Conditions together with the purchase order and any other materials or instructions (whether or not in writing) which they accompany (the “**Order**”) comprise the contract on which Ocado shall purchase and the Supplier shall supply Goods and/or Services as set out in the Order (the “**Contract**”). If the Order is in respect of the supply of Goods or Services only (but not both), those parts of these Conditions addressing the supply of Services or Goods (respectively) only shall be ignored.

1. Definitions

In these Conditions:

“**Business Day**” means a day other than a Saturday, Sunday or public holiday on which banks in London, England and Madrid and Barcelona, Kingdom of Spain are open for business.

“**Buyer**” means the representative of Ocado who placed the Order.

“**Confidential Information**” means any information (regardless of its form) relating to the business, customers, finances, trade secrets, know-how or methods of carrying on business, plant and equipment, technical innovations, business plans, operational blueprint, IT strategy, operating data, personal data of Ocado, its employees, agents, representative or customers and financial and technical information of Ocado or any member of the Ocado Group, whether or not it has been identified in writing as confidential or is marked “Confidential”, “Proprietary” or in some other manner to indicate its confidential nature.

“**Delivery Location**” means the location specified in the Order or such other place as Ocado notifies the Supplier prior to delivery.

“**Force Majeure Event**” means any circumstance not within a party’s reasonable control and in respect of which it would not have been reasonable for the party to have allowed contingency. The only traffic incidents that shall be Force Majeure Events are those that render deliveries impossible within 48 hours of the due date for delivery;

“**Goods**” means the goods set out in the Order;

“**Insolvency Event**” means a party suffering any of the following events: (i) where a resolution is passed for the winding-up of a party, except for any passed for the purpose of a solvent amalgamation or reconstruction, which, unless brought by the other party, is not dismissed within 21 days; (ii) the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy in relation to a party or all or substantially all of its assets; (iii) where any step is taken by the holder of any security over all or substantially all of the assets of a party to enforce that security; (iv) where all or substantially all of the assets of a party is subject to attachment, sequestration, execution or any similar process; (v) where a party enters into a composition or arrangement with its creditors or any class of them; (vi) where a party is unable to pay its debts as they call due; (vii) if the Supplier is a natural person, where anything analogous to any of the events described in (i) to (vi) occurs in respect of him; or (viii) where anything analogous to any of the events described in paragraphs (i) to (vii) above occurs in any jurisdiction;

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights,

trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Ocado**” means the member of the Ocado Group which placed the Order;

“**Ocado Group**” means Ocado Group plc (registered in England with number 07098618), its group undertakings (as defined in section 1161(5) of the Companies Act 2006) together with any other body corporate or unincorporated undertaking in which it has an interest;

“**Ocado Property**” means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business of the Ocado Group or affairs of Ocado or any member of the Ocado Group or its or their customers, employees and business contacts, and any equipment, keys, hardware or software provided for the Supplier or its personnel's use by Ocado during the supply of Goods and/or Services, and any data or documents (including copies) produced, maintained or stored by the Supplier or its personnel during the supply of Goods and/or Services.

“**Services**” means the services set out in the Order;

“**Specification**” means any specification for the Goods or Services agreed by Ocado and the Supplier;

“**Supplier**” means the person identified in the Order as the supplier of the Goods or Services;

“**Supplier Personnel**” means Supplier's employees, consultants, agents, independent contractors and subcontractors; and

“**VAT**” means Value Added Tax or Spanish equivalent, “**IVA**” (*Impuesto sobre el valor añadido*) as applicable;

“**Working Hours**” means between 9:30 a.m. and 5:30 p.m. on a Business Day.

2. Basis of Contract

2.1 The Order constitutes an offer by Ocado to purchase the Goods or Services from the Supplier in accordance with the Contract. The Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order or any act by the Supplier consistent with fulfilling the Order.

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- 2.2 The Contract comprises the contract between the parties for the supply of the Goods or Services to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 In the event of conflict between the Order and these conditions, the terms of the Order shall prevail.
- 2.4 The Supplier shall supply and Ocado shall purchase the Goods or Services in accordance with the terms of the Contract.

3. Supply and delivery of Goods

- 3.1 The Goods shall:
- 3.1.1 correspond with their description and any applicable Specification;
 - 3.1.2 be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by Ocado, expressly or by implication, and in this respect Ocado relies on the Supplier's skill and judgment;
 - 3.1.3 be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery.
- 3.2 The Supplier shall deliver the Goods:
- 3.2.1 on the date(s) specified in the Order or, if no such date is specified, then on the fifth following the date of the Order;
 - 3.2.2 to the Delivery Location; and
 - 3.2.3 in Working Hours or as instructed by Ocado.
- 3.3 The Supplier shall ensure that:
- 3.3.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 3.3.2 if the Supplier requires Ocado to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 3.4 If the Supplier:

3.4.1 delivers less than 95% of the quantity of Goods ordered, Ocado may reject the Goods; or

3.4.2 delivers more than the quantity of Goods ordered, Ocado may reject the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered and Ocado accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

3.5 Title to and risk in the Goods shall pass to Ocado on completion of delivery.

3.6 In supplying and delivering the Goods the Supplier shall co-operate with Ocado in all matters relating thereto, and comply with all reasonable instructions of Ocado.

4. Supply of Services

4.1 The Supplier shall commence the supply of the Services on the date(s) specified in the Order or, if no such date is specified, on the fifth Business Day following the date of the Order. The Services shall be supplied either for the duration of the period set out in the Order or otherwise in an efficient and expeditious manner.

4.2 In providing the Services, the Supplier shall:

4.2.1 co-operate with Ocado in all matters relating to the Services, and comply with all reasonable instructions of Ocado;

4.2.2 perform the Services with the all due care, skill and diligence in accordance with best practice in the relevant industry, profession or trade;

4.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number;

4.2.4 ensure that the Services shall comply with the Specification, if any, and the product of the Services shall be fit for any purpose expressly or impliedly made known to the Supplier;

4.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

4.2.6 supply the Services in accordance with all applicable statutory and regulatory requirements; and

4.2.7 while supplying the Services at Ocado's premises comply with all of Ocado's reasonable requests and instructions.

5. Ocado's remedies

- 5.1 If the Supplier fails to deliver the Goods or perform the Services by the applicable date, Ocado may:
- 5.1.1 terminate the Contract with immediate effect by giving notice to the Supplier;
 - 5.1.2 refuse to accept any subsequent performance of the Services or delivery of the Goods;
 - 5.1.3 if it has paid in advance for such Goods or Services, to have such sums refunded by the Supplier; and/or
 - 5.1.4 claim damages for any additional costs, loss or expenses incurred which are in any way attributable to the Supplier's failure to meet such dates.
- 5.2 If the Supplier supplies Goods or Services that do not comply with the undertakings set out in clauses 3 or 4, Ocado may:
- 5.2.1 reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's risk and expense;
 - 5.2.2 terminate the Contract with immediate effect by giving notice to the Supplier;
 - 5.2.3 require the Supplier to repair or replace the rejected Goods or re-perform the Services;
 - 5.2.4 require the Supplier to provide a full refund of the price of the rejected Goods or Services (if paid);
 - 5.2.5 refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make; and/or
 - 5.2.6 claim damages for any additional costs, loss or expenses incurred by Ocado arising from the Supplier's failure to supply Goods or Services in accordance with clause 3 or 4.
- 5.3 Ocado's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

6. Charges and payment

- 6.1 The price for the Goods:
- 6.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in any previously agreed schedule of rates for Ocado, or if none exists, the Supplier's published price list in force on the date of the Order; and

- 6.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Ocado.
- 6.2 The charges for the Services shall be as set out in the Order. Unless otherwise agreed in writing by Ocado, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.3 The Supplier may invoice Ocado on or at any time after completion of the delivery of the Goods or completion of the Services. Each invoice shall include such supporting information required by Ocado to verify the accuracy of the invoice and shall be sent to Accounts Payable, Ocado, Buildings One & Two Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL with a contemporaneous copy by email to the Buyer so that the Buyer knows that an invoice has been issued.
- 6.4 Unless Ocado disputes an invoice in good faith it shall pay the invoiced amounts within 30 days of the last day of the month in which the Goods were delivered or the Services completed.
- 6.5 All amounts payable by Ocado under the Contract are exclusive of amounts in respect of VAT. If any taxable supply for VAT purposes is made under the Contract by the Supplier to Ocado, Ocado shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.
- 6.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above the European Central Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 6.7 Ocado may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Ocado against any liability of Ocado to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

7. Confidentiality and Intellectual Property Rights

- 7.1 The Supplier acknowledges that in the course of the supply of Goods or Services it will have access to Confidential Information. The Supplier agrees to use the Confidential Information only in accordance with the terms of this clause 7.
- 7.2 The Supplier shall not, and shall procure that its personnel shall not (except in the proper course of its or his/her duties), either during the supply of Goods or Services or at any time after the termination or expiry of this Contract, use or disclose to any third party any Confidential Information except for:

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- 7.2.1 any use or disclosure authorised by Ocado in writing or required by law subject always to 7.7; or
- 7.2.2 any information which is already in, or comes into, the public domain otherwise than through the Supplier's or its personnel's unauthorised disclosure.
- 7.3 At any stage during the term of the Contract, the Supplier will promptly on request return to Ocado all and any Ocado Property in its or its personnel's possession.
- 7.4 Without limiting the generality of the provisions of this clause 7, the Supplier agrees, and shall procure that its personnel agree, to use at least the same degree of care which is used to prevent the disclosure of the Supplier's proprietary or confidential information of like importance, to prevent the disclosure of the Confidential Information disclosed or otherwise made available under this Contract, provided, however, that in no event shall such degree of care be less than reasonable in light of general industry practice.
- 7.5 The Confidential Information remains at all times the property of Ocado. No licence of any trade secrets, copyrights or other rights is granted by this agreement or any disclosure of Confidential Information hereunder.
- 7.6 Confidential Information may not be copied or reproduced by the Supplier or its personnel without the prior written consent of Ocado except to the extent necessary for the provision of the Goods and/or Services. Any copies will be considered Confidential Information.
- 7.7 In the event that the Supplier becomes legally compelled including, without limitation, by any applicable law, rule, regulation or order, by a stock exchange or court, governmental, regulatory or administrative or similar agency of competent jurisdiction to disclose the Confidential Information, the Supplier may disclose such information solely to the extent advised by written opinion of the Supplier's legal advisers, and shall, unless legally prohibited from doing so, provide Ocado with prior written notice of such requirement so that the parties can take reasonable steps to minimise the level of disclosure. If Ocado so requests, the Supplier shall cooperate (at Ocado's expense) in the defence of a demand. The Supplier shall use all reasonable endeavours as Ocado requests to ensure that, to the maximum extent possible in the circumstances, confidential treatment will be accorded to the Confidential Information. If the Supplier is legally prohibited from giving prior notice, the Supplier shall give notice as soon as it is no longer prohibited from doing so. If it is not reasonably practical for the Supplier to give prior notice, the Supplier shall give such notice as reasonably practical after making the disclosure.
- 7.8 The Supplier agrees that the Confidential Information is by its nature, valuable proprietary commercial information, the misuse of or unauthorised disclosure of which would be likely to cause Ocado considerable and uncompensatable damage, and accordingly concedes that, without prejudice to any other rights and remedies which may be available to Ocado in respect of any breach of this clause 7, Ocado is entitled to relief by way of injunction including any interim injunction available from any competent court having jurisdiction over its terms.
- 7.9 The Supplier may not use the name of Ocado in connection with any advertising or publicity materials or activities, nor disclose the terms of this agreement without Ocado's

prior written consent.

- 7.10 The confidentiality obligations set out in this Contract will remain in force for a period of 20 years.
- 7.11 Neither party shall, pursuant to the Contract, grant or transfer to the other party any right in its Intellectual Property Rights, save that:
- 7.11.1 all Intellectual Property Rights in any products of the Services conceived or made by the Supplier or its personnel in the course of providing the Services shall belong to Ocado and shall pass to Ocado upon creation of all such Intellectual Property Rights and the Supplier hereby assigns and agrees to assign absolutely with full title guarantee all the interest therein to Ocado or its nominee. Whenever requested to do so by Ocado, the Supplier shall, at Ocado's expense, execute any and all applications, assignments or other instruments which Ocado shall deem necessary to give effect thereto at no additional cost to Ocado; and
- 7.11.2 the Supplier hereby grants to Ocado a royalty-free, world-wide, non-exclusive, perpetual, irrevocable, freely transferable licence (with the unrestricted ability to sub-license) to use any Intellectual Property Rights in the goods to the extent necessary for Ocado to enjoy the full benefit of the Contract.

8. Indemnity

- 8.1 The Supplier shall indemnify Ocado against all liabilities, damages and losses and all other reasonably incurred costs and expenses suffered or incurred by any member of the Ocado Group as a result of or in connection with any claim made or threatened against any member of the Ocado Group:
- 8.1.1 for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 8.1.2 in respect of death, personal injury or damage to property arising out of, or in connection with, defects in the Goods or the Services, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

- 8.2 This clause 8 shall survive termination of the Contract.

9. Insurance

During the term of the Contract the Supplier shall maintain insurance in force for the following amounts:

- 9.1.1 €5,000,000 against its liability under clause 8.1.2;
- 9.1.2 €5,000,000 for product liability insurance; and
- 9.1.3 €1,000,000 for professional indemnity insurance in respect of his liability arising in respect of the provision of the Services.

10. Off Payroll Working

- 10.1 The Supplier warrants that no Supplier Personnel used for the provision of Services under this Agreement shall be contractors engaged via their own personal service companies.
- 10.2 The Supplier shall notify Ocado immediately if it becomes aware that any Supplier Personnel are contractors engaged via their own personal service companies and shall withdraw them immediately from providing any further Services to Ocado.
- 10.3 The Supplier shall indemnify and keep indemnified Ocado against all costs, charges, claims, actions, awards, expenses, damages, demand, penalties, fines, proceedings, liabilities, judgements or losses incurred or suffered by Ocado in connection with any breach of the warranty at clause 10.1 and/or any failure of the Supplier to comply with clause 10.2, including, but not limited to any income tax, social security contributions and any other liability, deduction, contribution, assessment or claim legally due.
- 10.4 The indemnity under clause 10.3 shall not be subject to any cap on liability within this Contract.

11. Termination

- 11.1 Without limiting its other rights or remedies, a party may terminate the Contract by written notice if the other party:
 - 11.1.1 commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within five Business Days of receipt of notice in writing to do so;
 - 11.1.2 repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
 - 11.1.3 suffers an Insolvency Event.
- 11.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued prior to termination.
- 11.3 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. Force majeure

- 12.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from a Force Majeure Event, provided that the party suffering that event uses all reasonable endeavours to mitigate its effect.
- 12.2 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than five Business Days, Ocado may terminate the Contract immediately by giving written notice to the Supplier.

13. Notices

13.1 A notice, notification or other communication required to be given hereunder in writing shall only be effective if it is in writing (including e-mail). Such notice shall be addressed:

13.1.1 by the Supplier to the Buyer; and

13.1.2 by Ocado to such person as the Supplier has indicated for these purposes or, if no such person has been indicated, such person as Ocado deems appropriate, acting reasonably.

13.2 A notice shall be deemed to have been duly given or made as follows:

13.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;

13.2.2 if sent by first class post, two Business Days after the date of posting; and

13.2.3 if sent by email, on sending, provided that the sender did not receive an error message,

provided that if, in accordance with the above provisions, any such notice, notification or other communication would otherwise be deemed to be given or made outside Working Hours, it shall be deemed to have been given or made at the start of Working Hours on the next Business Day.

13.3 Any email notice from the Supplier in respect of a dispute or termination shall, unless Ocado indicates otherwise, be copied to company.secretary@ocado.com.

13.4 All communications made by the Supplier under the Contract shall be made with the Buyer or such other person(s) as the Buyer or Ocado may instruct.

14. Compliance

14.1 The Supplier will at all times comply, and shall ensure that its employees, officers, agents, sub-contractors and representatives comply with:

(a) all applicable laws, statutes, regulations, and codes relating to and including but not limited to bribery, corruption, sanctions, slavery and human trafficking, the evasion (and facilitation of evasion) of tax, money laundering, and fraud; and

(b) the [Ocado Supplier Code of Conduct](#) (located on ocadogroup.com) or the Supplier's own code of conduct, provided this includes provisions equivalent to the Ocado Supplier Code of Conduct.

14.2 The Supplier will notify Ocado immediately if it becomes aware, or has reason to believe, that any actual or suspected breach of this clause has been committed by the Supplier, its employees, officers, agents, sub-contractors and representatives.

14.3 Any breach of this clause will be deemed a material breach, and will entitle Ocado to terminate this agreement with immediate effect. Alternatively, Ocado may, at its discretion, require the Supplier to take reasonable steps to remedy the breach. If Ocado is not satisfied with the Supplier's remedial attempts, Ocado reserves its right to terminate this agreement in accordance with this clause.

15. General

- 15.1 Ocado may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Ocado.
- 15.3 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.4 The Supplier shall comply with, and assist Ocado to comply with, all applicable laws, statutes, regulations, and codes relating to anti-money laundering, anti-slavery, anti-bribery and anti-corruption including but not limited to the Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing and the provisions of the Spanish Criminal Code.
- 15.5 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Ocado.
- 15.6 The Contract shall be governed by and construed in accordance with Spanish common law and the parties submit to the irrevocable jurisdiction of the courts of the city of Madrid.