

Terms & Conditions

blueleaf care

Blueleaf Limited - Terms & Conditions for the supply of Goods & Services

1. Interpretation

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

1.1 **Definitions:**

Bespoke Product(s): any Goods made by Blueleaf or on Blueleaf's behalf to the Customer's Goods Specifications or personalized by Blueleaf to the Customer's requirements. This includes (without limitation) where the Customer requests that Blueleaf makes changes to Goods, including to the finish, colour, fabric mixes or upholstery of Furniture.

Business Day: a day other than a Saturday, Sunday or public holiday in England. Conditions: these terms and conditions as amended from time to time in accordance with clause 22.8.

Confidential Information: means all information, in whatever form, disclosed, made available by, or otherwise emanating from that party (or its Group Companies) in connection with the Contract (and shall include its terms and, in the case of Blueleaf's Confidential Information, all information relating to the specification of the Goods and performance of the Services). Confidential Information shall not include information which:

(a) At the time of disclosure is in the public domain;

(b) After disclosure becomes part of the public domain otherwise by breach by a party of the provisions of the Contract;

(c) Was already in the possession of the receiving party at the time of disclosure;

(d) Was received by the receiving party after disclosure from a third party who was not required to hold it in confidence; or

(e) Is trivial and/or obvious.

Contract: the contract between Blueleaf and the Customer for the supply of Goods and/or Services, formed on the acceptance of each Order as set out herein, and which shall be governed by these Conditions or, where the same has been agreed between Blueleaf and the Customer, the terms of a Framework Agreement.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or undertaking who purchases the Goods and/or Services from Blueleaf, as set out in the Order or (where the same has been agreed) a Framework Agreement.

Deliverables: the deliverables set out in the Order produced by Blueleaf for the Customer.

Delivery Location: means the location set out in the Order or such other location as Blueleaf and Customer may agree in writing.

Extended Term: where the Contract is subject to a Minimum Term and will auto renew for a single fixed extended period or multiple fixed extended periods beyond that Minimum Term as set out in a relevant Framework Agreement.

Financial Distress Event: means where the Customer receives any demand for repayment of lending facilities or Blueleaf concludes in its direction that: (i) the financial position of the Customer has deteriorated to such an extend that its ability to pay the Charges or otherwise comply with the terms of the Contract is put in jeopardy; or (ii) the Customer has no realistic prospect of avoiding an Insolvency Event.

Force Majeure Event: has the meaning given to it in clause 20.

Framework Agreement: means any bespoke framework agreement entered into between the Customer and the Supplier, incorporating these Conditions.

Furniture: any sofas, armchairs, chairs, footstools, cushions, beds, mattresses or other similar goods that Blueleaf sells.

Goods: the goods (or any part of them) set out in the Order, which may (without limitation) include Furniture.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Blueleaf.

Intellectual Property Rights: means all intellectual and industrial property rights, including, patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Insolvency Event: means any corporate action, application, order, proceeding or appointment or other step is taken or made by or in respect of a party for any composition, compromise or arrangement with its creditors generally, any restructuring plan, any moratorium, its winding-up (other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation), dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three Business Days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which that party is incorporated, resident or carries on business.

Minimum Term: any minimum contract term set out in a relevant Framework Agreement.

Order: the Customer's order for the supply of Goods and/or Services, which may either be made via the Website on an ad hoc basis, or pursuant to the terms of a Framework Agreement (where agreed with Blueleaf).

Quarter: means a period of three calendar months ending on March 31, June 30, September 30, or December 31, **"Quarterly"** shall be construed accordingly. **Services:** the services, including the Deliverables, supplied by Blueleaf to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by Blueleaf to the Customer.

Blueleaf Materials: means all materials, equipment, and documents which are the property of Blueleaf, and any other item identified in the Order as Blueleaf material.

Term: means the term of the Contract, as set out in any Framework Agreement.

Website: means the dedicated online site where, pending appropriate account set up, a Customer is able to place Orders with Blueleaf on an ad hoc basis.

1.2 **Interpretation:**

(a) A **person i**ncludes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
(b) A reference to a party includes its successors and permitted assigns.
(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
(e) A reference to **writing** or **written i**ncludes email, (except where expressly provided).
(f)These Conditions may apply to the Contract in the following circumstances: (i) with respect to ad hoc Orders made via the Website; and/or (ii) with respect to Orders made pursuant to a Framework Agreement, where these Conditions will be deemed incorporated into such Framework Agreement in accordance with its terms.

2. Basis of Contract:

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions and/or (where relevant) the terms of any Framework Agreement.

2.2 No Order shall be binding upon Blueleaf until accepted by Blueleaf. The Order shall only be deemed to be accepted when (i) Blueleaf issues written acceptance of the Order; or (ii) Blueleaf has started to fulfil the Order in good faith.

2.3 If there is any ambiguity or conflict between any of the following then the term in the document first in the following list shall prevail: (i) the terms set out in an Order provided the Order has been accepted by Blueleaf; (ii) the terms of any Framework Agreement; and (ii) these Conditions.

2.4 Any samples, images, drawings, descriptive matter or advertising issued by Blueleaf and any descriptions of the Goods or illustrations or descriptions of the Services contained in Blueleaf's catalogues or brochures or otherwise are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by Blueleaf shall not constitute an offer and is only valid for a period of 30 days from its date of issue unless withdrawn earlier.

2.7 In connection with the supply of Goods and/or Services, the parties may agree in an Order that Blueleaf will supply and service certain Blueleaf-owned hardware (e.g. a pump or similar system). Where such hardware is supplied, the hardware is supplied 'as is' without warranty and shall remain the sole property of Blueleaf (and the Customer shall not do or omit to do anything inconsistent with this). Blueleaf shall have sole responsibility for servicing and maintaining any such hardware at its own cost, save that Blueleaf shall reserve the right to charge the Customer additional fees to repair or replace any such hardware due to damage to the same caused by the Customer's acts or omissions. Where a scheduled visit is cancelled, postponed, or cannot be completed due to lack of site access, unavailable equipment, or absence of an authorised site representative with less than 24 hours' notice, Blueleaf reserves the right to charge a cancellation fee to recover costs incurred by Blueleaf and/or its subcontractors. Blueleaf also reserves the right to suspend free servicing and support where loan equipment is not being used with Blueleaf-approved chemicals. At the end of the Term, or, in the event that the customer stops using Blueleaf approved chemicals, Blueleaf shall be entitled (but not obliged) to recover any such hardware, and the Customer shall provide all necessary assistance to Blueleaf to enable the same, including providing Blueleaf with access to the Customer's premises. If Blueleaf is unable to retrieve the pumps, Blueleaf reserves the right to charge per asset.

2.8 Once the Order has been accepted by Blueleaf, the Customer may not cancel the order for Bespoke Products, either before or after delivery.

2.9 In relation to Goods other than Bespoke Products, Blueleaf, at its sole discretion and subject to Blueleaf's written authorisation, may allow the Customer to cancel all or a portion of its Order for Goods or Services. If so authorised, the Customer's cancellation of any Order for Goods is subject to Blueleaf's then current Order cancellation policy and restocking charges. All returned Goods must be in new and unused condition. For authorised cancellations of Orders for Services, the Customer shall pay Blueleaf in full for all fully-burdened direct and indirect costs incurred by Blueleaf for Services performed, plus a reasonable profit thereon. Blueleaf will notify the Customer of the amount owed, which amount shall be immediately due and payable to Blueleaf. Other than as authorised as aforementioned all other Orders are non-cancellable and non- returnable and the Customer is liable for payment of the full Order price for same.

3. Goods:

3.1 The Goods are described in the Goods Specification or Blueleaf's website, written quotation or catalogue (as may be modified by any applicable Goods Specification) as the case may be.

3.2 To the extent that the Goods are Bespoke Products, the Customer shall indemnify Blueleaf against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses (all calculated on a full indemnity basis)) suffered or incurred by Blueleaf arising out of or in connection with any claim made against Blueleaf for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Blueleaf's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Blueleaf's product offering evolves over time and whilst Blueleaf will generally offer Goods in accordance with market demand, Blueleaf gives no guarantee that a specific type of Goods will remain available for purchase for any particular length of time and reserves the right to alter its product offering from time to time at its sole discretion, including (without limitation) discontinuing the sale of certain Goods where necessary.

3.4 Blueleaf reserves the right to amend the Goods Specification from time to time. Blueleaf shall give notice of any changes to the Goods Specifications to the Customer as soon as reasonably practicable.

4. Delivery of Goods

4.1 Blueleaf shall use reasonable endeavors to ensure that:
(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to Blueleaf. The Customer shall make any such packaging materials available for collection at such times as Blueleaf shall reasonably request. Returns of packaging materials shall be at Blueleaf's expense.

4.2 Delivery of the Goods shall take place:
(a) at the time Blueleaf notifies the Customer that the Goods are ready for collection; or
(b) if Blueleaf agrees to transport them to the Delivery Location when they are unloaded at the Delivery Location.

4.3 Any dates and times quoted for delivery of the Goods are approximate only, and time shall not be of the essence in respect of these. Blueleaf shall not be liable for any loss, damage, cost or expense caused directly or indirectly by delays in delivery of the Goods. The Buyer may not terminate the Contract by reason of any delay in delivery and / or any short delivery. Blueleaf may deliver early.

4.4 If the Customer fails to take delivery of the Goods or fails to give Blueleaf adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to Blueleaf, Blueleaf may:
(a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and
(b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.

4.5 If Blueleaf delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Blueleaf shall make a pro rata adjustment to the invoice for the Goods.

4.6 The Customer shall be deemed to have accepted the Goods after 7 days after delivery. After acceptance the Customer shall not be entitled to reject the Goods which are not in accordance with the Contract.

4.7 Blueleaf may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of goods:

5.1 Blueleaf warrants that on delivery the Goods shall:
(a) conform in all material respects with the Goods Specification; and
(b) be free from material defects in design, material and workmanship.

5.2 Blueleaf shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
(a) the Customer gives notice in writing within 14 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
(b) Blueleaf is given a reasonable opportunity of examining such Goods; and
(c) the Customer (if asked to do so by Blueleaf) returns such Goods to Blueleaf's place of business at the Customer's cost.

5.3 Blueleaf shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
(b) the defect arises because the Customer failed to follow Blueleaf's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or good trade practice;
(c) the defect arises as a result of Blueleaf following any drawing, design or Goods Specification supplied by the Customer;
(d) the Customer alters or repairs such Goods without the written consent of Blueleaf;
(e) the Goods are not kept or operated in a suitable environment or are used outside the purposes for which they are designed;
(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
(g) the defect arises as a result of any act or omission of any person other than Blueleaf or its officers or employees;
(h) the Goods differ from their description or the Goods Specification (as applicable) as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
(i) the Goods are Bespoke Products made to the Customer's Goods Specification.

5.4 Except as provided in this clause 5:(i) Blueleaf shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1; and (ii) the Customer does not have a right to return the Goods following their delivery.

5.5 The Goods may also be subject to manufacturer warranties, which will constitute a separate warranty commitment directly between the relevant manufacturer of the Goods and the Customer, and whilst Blueleaf shall provide reasonable assistance to the Customer in connection with relevant manufacturer warranty documentation, the Customer's sole recourse under any manufacturer warranty shall be against the manufacturer directly and not against Blueleaf (who shall have no liability in connection with such warranties).

5.6 Some of the Goods, such as Furniture, may carry an additional warranty if such warranty is expressly contained in a Framework Agreement, quotation or accompanies the relevant Goods.

5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Blueleaf.

5.8 It is the Customer's sole responsibility to choose the colour of the fabrics that is suitable for its intended use of the goods, and to take all appropriate measurements in the Customer's rooms to ensure that the dimensions of the Goods are suitable for the Customer's intended use of them.

5.9 While Blueleaf tries to make sure that the colours of our Goods are displayed accurately on the website, the actual colours that the Customer sees on their computer may vary depending on the computer equipment used. Colour of Goods can best be seen in Blueleaf's showroom.

5.10 Goods made from natural materials may not be uniform in colour or texture and natural variances may occur between fabric and wood batches and other natural materials.

5.11 Natural fibres and materials may change colour with exposure to heat, moisture, abrasion and UV light and Blueleaf hereby disclaims all liability for such change unless the change occurred prior to the transfer of risk under clause 6.1.

5.12 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6. Title and risk:

6.1 Risk of loss or damage to the Goods shall pass to the Customer on completion of delivery.

6.2 Title in the Goods shall not pass to the Customer until the earlier of:
(a) the time that Blueleaf receives payment in full (in cash or cleared funds) for the Goods and any other goods that Blueleaf has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
(b) the Customer resells the Goods if permitted to do so in writing (including by email), by Blueleaf, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until such time as the title in the Goods has passed to the Customer under clause 6.2, the Customer shall:
(a) store the Goods separately from all other goods held by the Customer so
that they remain readily identifiable as Blueleaf's property;
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Blueleaf's behalf from the date of delivery;
(d) not pledge or allow any encumbrances, lien, charge or other interest to arise or be created over the Goods;
(e) notify Blueleaf immediately if it becomes subject to an Insolvency Event; and
(f) give Blueleaf such information relating to the Goods as Blueleaf may require from time to time.

6.4 Subject to clause 6.5, the Customer may use the Goods in the ordinary course of its business or, if written permission is given by Blueleaf (but not otherwise), resell the Goods before Blueleaf receives payment for the Goods. However, if the Customer resells the Goods before that time:
(a) it does so as principal and not as Blueleaf's agent;
(b) title to the Goods shall pass from Blueleaf to the Customer immediately before the time at which resale by the Customer occurs; and
(c) it is without prejudice to any rights or remedies Blueleaf may have in respect of the Customer's breach of the Contract (including, without limitation, breach of this clause 6.4).

6.5 If before title in the Goods passes to the Customer and the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy Blueleaf may have:
(a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
(b) Blueleaf may at any time:
(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover such Goods and any documentation relating to them. Recovery by Blueleaf of the Goods shall not of itself cancel the Customer's liability to pay the whole or balance of the price for the Goods or any other rights of Blueleaf under the Contract.

7. Claims:

7.1 Any claim that Goods have not been delivered or Services not commenced must be notified in writing to Blueleaf within 5 Business Days of the estimated or planned date for delivery or performance.

7.2 The Customer shall inspect the Goods and/or Services immediately on delivery and shall no later than 5 Business Days after delivery notify Blueleaf in writing of any shortage in delivery, damage or any other non-conformity with the Contract that ought reasonably to have been apparent on a reasonable inspection of the Goods or Service.

8. Supply of services:

8.1 Subject to the Customer paying the Charges, Blueleaf shall:
(a) supply the Services to the Customer in accordance with the Service Specification in all material respects; and
(b) perform its Service provision obligations under the Contract with reasonable skill and care.

8.2 Blueleaf reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Blueleaf shall notify the Customer in any such event.

9. Customer's obligations:

9.1 The Customer shall:
(a) ensure that the terms of the Order are complete and accurate;
(b) prepare the Customer's premises for the supply of Goods and/or Services and facilitate delivery of the Goods and/or Services by providing, at its own expense, all requisite materials, facilities, utilities, access and suitable working conditions to enable the supply of the Goods and/or Services to be carried out safely and expeditiously;
(c) co-operate with Blueleaf in all matters relating to the supply of the Goods and/or Services;
(d) provide Blueleaf and its personnel, in a timely manner and at the Customer's costs, undisturbed access to the Customers premises, data and other facilities;
(e) comply with all applicable laws, including without limitation health and safety laws, and provide a working environment that complies with all relevant safety legislation, regulations and guidance and inform Blueleaf in writing before the commencement of any Services of any safety requirements and potential risks in and around the location of supply;
(f) provide Blueleaf with such information and materials as Blueleaf may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
(g) obtain and maintain all necessary licences, permits, permissions and consents which may be required for the Services before the date on which the Services are to start;
(h) store and use the Goods in accordance with instructions supplied by Blueleaf and/or manufacturer of the Goods and Blueleaf shall not be responsible for any damage, loss, or claims arising from any failure to comply with such instructions;
(i) keep all Blueleaf Materials at the Customer's premises in safe custody at its own risk, maintain Blueleaf Materials in good condition until returned to Blueleaf, and not dispose of or use Blueleaf Materials other than in accordance with Blueleaf's written instructions or authorisation;
(j) comply with any additional obligations as set out in the Service Specification and/or the Goods Specification; and

(k) co-operate with any product recall operation initiated by Blueleaf including providing all information and assistance that Blueleaf may reasonably require and the Customer agrees promptly to recall any of the Goods from the market when reasonably requested to do by Blueleaf. The Customer shall not itself instigate any product recall. The Customer shall inform Blueleaf of all serious complaints and any other circumstances of which the Customer is aware that may give rise to a product recall requirement.

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

10. Exclusivity

10.1 If specified in a Framework Agreement, the Customer appoints Blueleaf as its exclusive supplier in the United Kingdom of the Goods and / or Services set out in the Framework Agreement. In such instances, except with the prior written consent of Blueleaf, the Customer shall not and shall procure that none of the Customer's Group Companies shall during the term of the Contract: (i) purchase services similar to the Services from any third party; or (ii) carry out the Services (or similar services)itself. The parties acknowledge that nothing in this Contract restricts Blueleaf from providing Goods and / or Services or similar goods or services to any other customers.

10.2 If Blueleaf anticipates that it will be unable to fulfil all or part of a Customer's Order for any Goods and/or Services that are subject to exclusivity:
(a) Blueleaf shall inform the Customer in writing as soon as reasonably practicable detailing which Goods and/or Services it is unable to fulfil for the relevant Order; and
(b) the Customer may at its option agree alternative delivery dates for the relevant Goods and/or Services, or obtain from any other person substitute Goods and/or Services which Blueleaf anticipates it will be unable to supply for the relevant Order only.

11. Deposit

11.1 Blueleaf may, at any time and in respect of any Order, require the Customer to pay a non-refundable deposit as security for payment of future invoices or any other amounts that may become payable by the Customer to Blueleaf under or in connection with this Contract. If the Customer fails to pay such a deposit Blueleaf has a right to suspend provision of the Services and/or all further deliveries of Goods.

11.2 If a deposit is payable by the Customer to Blueleaf, Blueleaf shall be entitled to apply the deposit against any amount payable by the Customer under or in connection with the Contract. The Customer shall reinstate the full deposit amount by paying to Blueleaf any sums deducted from the deposit within 7 days of a demand for the same. The payment, receipt and application of any deposit is without prejudice to any rights, remedies or claims Blueleaf may have against the Customer under or in connection with the Contract. The balance of the deposit shall be offset against the final payment due by the Customer to Blueleaf in respect of the corresponding Order.

12. Charges and payment

12.1 The Customer agrees to pay the prices set out in the Order.

12.2 Blueleaf may invoice the Customer for the sums payable, as set out in the Order.

12.3 The price for Goods:
(a) shall be the price set out in the Order, or if no price is quoted the price set out in Blueleaf's published price list as at the date of the Order; and
(b) shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, unless stated otherwise in the Order or otherwise agreed in writing by the parties.

12.4 The price for the Services:
(a) shall be the price set out in the Order, or if no price is quoted the price set out in Blueleaf's published list as at the date of the Order or where there is none applicable to the Services in question, the price calculated on a time and material basis at Blueleaf's then current rates; and
(b) in addition, Blueleaf shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Blueleaf engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Blueleaf for the performance of the Services, and for the cost of any materials.

12.5 Blueleaf reserves the right to increase the price of the Goods and/or Services prior to delivery of the same under a Contract, by giving notice to the Customer at any time before delivery of the Goods and/or Services(as applicable), to reflect any increase in the cost of the supply of the Goods and/or Services or any other reason that is due to:
(a) any factor beyond the control of Blueleaf (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
(b) any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Goods Specification and/or Service Specification; or
(c) any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give Blueleaf adequate or accurate information or instructions in respect of the Goods and/or Services.

12.6 In respect of the Goods and/or the Services, Blueleaf reserves the right to invoice the Customer at any time during or after the Contract term and shall be entitled to raise interim and/or abortive invoices where relevant.

12.7 The Customer shall pay each invoice submitted by Blueleaf:
(a) unless agreed otherwise in writing (including by email), by direct debit on the 15th of the month following the date of the invoice; and
(b) in full and in cleared funds to a bank account nominated in writing by Blueleaf (including by email), and time for payment shall be of the essence of the Contract.

12.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Blueleaf to the Customer, the Customer shall, on receipt of a valid VAT invoice from Blueleaf, pay to Blueleaf such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

12.9 If the Customer fails to make a payment due to Blueleaf under the Contract by the due date, then, without prejudice to any of rights or remedies Blueleaf might have Blueleaf, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 12.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

12.10 Without affecting any other right or remedy available to it, If payment of any amount due from the Customer is overdue or a Financial Distress Event or an Insolvency Event occurs, or Blueleaf reasonably believes that the Customer is about to become subject to any of them, Blueleaf may:
(a) suspend the supply of Goods and / or Services in whole or in part; and
(b) amend the terms set out in this clause 12 including to reduce the period for payment set out in clause 12.7 or require the payment in advance, by providing at least five Business Days' notice to the Customer.

12.11 All amounts due under the Contract shall be paid in full without any set-off, abatement, counterclaim, deduction or withholding of any kind (other than any deduction or withholding of tax as required by law).

13. Credit limit

13.1 The level of the Customer's credit limit in respect of all outstanding invoices and all Goods and/or Services ordered but not yet invoiced (Credit Limit) shall be set out in any Framework Agreement or as otherwise agreed between the parties in writing (including by email).

13.2 Blueleaf may, in its absolute discretion, amend the Credit Limit at any time by providing written notice (including by email) to the Customer.

13.3 Blueleaf shall not be obliged to accept Orders from the Customer in excess of the Credit Limit.

14. Price review

14.1 Subject to any increases in prices pursuant to clause 12.5, the price of the Goods or Services for each Contract is set out in the applicable Order. Not withstanding this, Blueleaf does not guarantee that the prices for Goods or Services will remain the same over time, and Blueleaf reserves the right to increase the prices of Goods or Services from time to time for new Orders.

14.2 Blueleaf shall make the current prices for Goods or Services available via the Website from time to time.

15. Intellectual property rights

15.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Blueleaf.

15.2 The Customer shall (at its own expense) promptly execute all such documents and perform all such acts as may reasonably be required for the purpose of giving full effect to this clause 15.

15.3 Blueleaf grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term of the Contract to copy the Deliverables for the purpose of receiving and using the Goods, Services and the Deliverables in its business.

15.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 15.3.

15.5 The Customer grants Blueleaf a fully paid-up, non-exclusive, royalty-free licence to copy and modify any materials provided by the Customer to Blueleaf for the term of the Contract for the purpose of providing the Goods, Services and Deliverables to the Customer.

16. Confidentiality

16.1 Without prejudice to each party's other rights and remedies, each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other and shall not divulge such Confidential Information to a third party nor make any use of such Confidential Information (other than in performance of the Contract) without the other's written consent, except as permitted by clause 16.2.

16.2 Each party may disclose the other party's confidential information:
(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 The Customer permits Blueleaf to make reference to the Customer as a customer of Blueleaf in Blueleaf's publicity materials.

17. Limitation of liability: THE CUSTOMER'S ATTENTIONIS PARTICULARLY DRAWN TO THIS CLAUSE

17.1 Nothing in these Conditions shall limit or exclude Blueleaf's liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
(b) fraud or fraudulent misrepresentation; and
(c) any other term which cannot be limited or excluded by law.

17.2 Not withstanding any other provision of the Contract, but subject to clause 17.1, Blueleaf shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, for any:
(a) direct or indirect:
(i) loss of profits;
(ii) loss of sales or business;
(iii) loss of agreements or contracts;
(iv) loss of anticipated savings;
(v) loss of use or corruption of software, data or information;
(vi) loss of or damage to goodwill;
(vii) loss of reputation; or
(b) wasted costs
(c) indirect or consequential loss or damage.

17.3 The parties agree that each of the sub-clauses in clause 17.2 and each of the sub-paragraphs 17.2 (a) (i) to 17.2(a) (vii) in sub-clause 17.2(a) constitute separate terms and the introductory wording of clause 17.2 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause of sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 78.2 or otherwise.

17.4 Without prejudice to the other limitations on Blueleaf's liability in the Contract but subject to clause 17.1 Blueleaf's total liability to the Customer in respect of all losses arising under or in connection with the Contract, the Goods and/or the Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited in respect of all claims in aggregate to a sum equal to the greater of: (i) £250; or (ii) the price of the Goods and Services supplied by Blueleaf and paid for by the Customer under the Contract.

17.5 Without prejudice to any duty of the Customer at common law, the Customer shall take such steps as Blueleaf may reasonably require to mitigate or reduce any losses or claims that may arise in relation to the Contract.

17.6 Blueleaf's obligations regarding the standards for and quality of the Services are only as set out in the express terms of the Contract. All other duties, warranties, conditions, terms and liabilities in respect of the quality of the Services or any Goods supplied that are imposed on Blueleaf by law (including terms implied by statute, common law or otherwise) are, to the fullest extent permitted by law, excluded from the Contract.

17.7 This clause 17 shall survive termination of the Contract.

18. Termination

18.1 Without affecting any other right or remedy available to it, and unless otherwise agreed in writing between Blueleaf and the Customer, either party may terminate the Contract by giving the other party not less than 90 days' written notice to terminate, provided always that where the Contract is subject to a Minimum Term or an Extended Term, such notice to terminate shall not expire until on or after the end of the Minimum Term or Extended Term in which notice is given. This clause 18.1 is without prejudice to the provisions of clauses 18.2 to 18.3 (inclusive).

18.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
(a) commits an irremediable material breach of the Contract;
(b) commits a material breach of its obligations under the Contract and has failed to remedy that breach within 30 days after receipt of notice in writing to do so; or
(c) suffers an Insolvency Event.

18.3 Without affecting any other right or remedy available to it, Blueleaf may terminate the Contract with immediate effect by giving written notice to the Customer if:
(a) the Customer fails to pay any amount due under the Contract on the due date for payment;
(b) there is a change of control of the Customer;
(c) a Financial Distress Event occurs; or
(d) the Customer commits any breach of clause 9.

19. Consequences of termination

19.1 On termination of the Contract:
(a) the Customer shall immediately pay to Blueleafall of Blueleaf's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Blueleaf shall submit an invoice, which shall be payable by the Customer immediately on receipt;
(b) the Customer shall pay any costs due on termination in respect of any Blueleaf Material provided; and
(c) the Customer shall return all of Blueleaf Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Blueleaf may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

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

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

20. **1.Force majeure**

Blueleaf shall not be liable for delay in performance of, or failure to perform, any of its obligations under the Contract if such delay or failure results from an event, circumstance or cause beyond its reasonable control including but not limited to strikes, lockouts or other industrial action (whether involving the workforce of Blueleaf or of any other part), acts of God, epidemics, pandemics, civil emergencies, war, riot, civil commotion, acts of terrorism, theft, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, failure or breakdown of plant, machinery, systems or vehicles, fire, flood, extreme weather conditions, power failure, failure of telecommunications networks or default of suppliers or sub-contractors (a Force Majeure Event). If a Force Majeure Event continues for a period of 30 days or more, Blueleaf shall be entitled to terminate the Contract on giving written notice to the Customer.

21. **Non-solicitation**

Except as a result of a response to a general public advertisement not specifically targeted at any employee of Blueleaf, while this Agreement is in force and for a period of twelve months following its expiry or termination, the Customer shall not solicit the employment of, or employ or offer employment to any person who is or has been engaged as an employee of Blueleaf on work or activities relating to the Services and/or this Agreement. In this clause "employ" and "employment" shall include, without limitation, the engagement of such person in any capacity, whether as an employee, director, contractor, consultant or otherwise. If the Customer is in breach of this provision, it shall, if requested, pay to Blueleaf as liquidated damages, an amount equal to [one half of the value of the final gross annual emoluments payable by Blueleaf,to such person including any bonus entitlement and commissions and calculated before deduction of tax, national insurance or any other deductions. Any claim for or payment of such liquidated damages shall be without prejudice to Blueleaf's right to seek injunctive or other equitable relief.

22. **General**

22.1 **Assignment and other dealings**
(a) Blueleaf may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall enter into any documentation, including novation agreements, reasonably required by Blueleaf in order to effect any such transfers to third parties.
(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

22.2 **Notices.**
(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);; or, only where expressly permitted, sent by email to its main email address.
(b) Any notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by prepaid first-class post or other next working day delivery service,at 9.00 am on the second BusinessDay after posting or at the time recorded by the delivery service; if sent by fax or email, at 9.00 am on the next BusinessDay after transmission; or, if sent by email (but only where email is expressly permitted), at 9.00 am on the next Business Day after transmission.
(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

22.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

22.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise 1.1 any right or remedy provided under the Contractor by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contractor by law shall preventor restrict the further exercise of that or any other right or remedy.

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

22.6 **Entire agreement.**
(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim forinnocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
(c) Nothing in this clause shall limit or exclude any liability for fraud.

22.7 **Third parties rights**. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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

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

Blueleaf Limited
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blueleaf care