

ORNUA CO-OPERATIVE LIMITED

STANDARD TERMS AND CONDITIONS OF SALE  
(FOR GOODS AND/OR SERVICES)

*The Customer's attention is particularly drawn to the provisions of clause 15 (Indemnity) and clause 16 (Limitation of liability).*

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

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

**Conditions:** these standard terms and conditions of supply as amended from time to time in accordance with clause 20.8.

**Contract:** the contract between Ornua and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** the beneficial ownership of more than 50% of the issued share capital of an entity or the legal power to cause or direct to cause the direction of the general management of the entity.

**Customer:** the person or firm who purchases the Goods and/or Services from Ornua.

**Customer Supplied Materials:** has the meaning given in clause 5.3(d).

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** has the meaning given in clause 19.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** Ornua's written specification for the Goods or such other specification for the Goods that is agreed in writing by Ornua and the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade 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.

**Order:** the Customer's order for the supply of Goods and/or Services.

**Ornua:** Ornua Co-operative Limited, an Industrial & Provident Society, incorporated and registered in Ireland (Registration No. 3221R) with its registered office at Grattan House, Mount Street Lower, Dublin 2, Ireland.

**Services:** the services (or any part of them), including any deliverables required for those services, supplied by Ornua to the Customer as set out in the Services Specification.

**Services Specification:** Ornua's written description or specification for the Services or such other specification for the Services that is agreed in writing by Ornua and the Customer.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its 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** includes email.

## **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.
- 2.2 The Order shall only be deemed to be accepted when Ornuua issues written acceptance of the Order or, if earlier, when the Goods and/or Services are delivered by Ornuua, at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Ornuua and any descriptions of the Goods or illustrations or descriptions of the Services contained in Ornuua's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 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. For the avoidance of doubt, these Conditions shall not be overridden or varied or added to except by agreement in writing between the Customer and a representative of Ornuua having the express written authority to do so. No other terms and conditions shall apply to the supply by Ornuua of the Goods and/or Services and any other such terms and/or conditions are hereby rejected and excluded. Signature on behalf of Ornuua of any of the Customer's order forms, delivery dockets or other standard documentation shall not override these Conditions.
- 2.5 Any quotation given by Ornuua (a) shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue and (b) is subject to withdrawal by Ornuua at any time before Ornuua's acceptance of any Order based upon it.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. Goods**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 Ornuua reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Ornuua shall notify the Customer in any such event.

## **4. Delivery of Goods**

- 4.1 Ornuua shall ensure that:
  - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Ornuua reference numbers, and the type and quantity of the Goods (including the code number of the Goods, where applicable); and
  - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material (such as, for example, pallets, steel cages (and any variations thereof), glass bottles and plastic crates) to Ornuua. The Customer shall make any such packaging materials available for collection at such times as Ornuua shall reasonably request and shall not reuse such packaging materials. Returns of packaging materials shall be at Ornuua's expense except that Ornuua reserves the right to charge the Customer for packaging materials which are not returned within the time specified by Ornuua or which have been returned but are not in a fit state or condition for reuse by Ornuua.
- 4.2 Ornuua shall deliver the Goods to the location set out in the Order or such other location as the parties may agree which may include delivery to a carrier (**Delivery Location**).
- 4.3 Delivery of the Goods shall be completed on the completion of the making available, unloading or loading of the Goods at the Delivery Location in accordance with the Incoterms<sup>®</sup> agreed for the Order concerned.
- 4.4 In the case of Goods delivered in sealed containers, the Customer must ensure that:

- (a) the containers and the seal numbers and quantities correspond with those shown on the delivery note;
  - (b) the seals are intact, and it shall notify Ornuia without delay of any discrepancy or broken seal; and
  - (c) the relevant officials from Customs & Excise or other relevant customs authority (if outside Ireland) are present if any action is taken.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 4.6 If Ornuia fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Ornuia shall have no liability for any failure or delay in delivery of Goods to the extent caused by a Force Majeure Event or the Customer's failure to provide Ornuia with adequate delivery instructions or other relevant instructions related to supply of the Goods.
- 4.7 If 10 Business Days after Ornuia notified the Customer that Goods were ready for collection or delivery the Customer has not taken or accepted delivery of them, Ornuia may resell or otherwise dispose of part or all of the Goods and charge the Customer for any reasonable storage and selling costs incurred.
- 4.8 Ornuia 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.
- 4.9 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Ornuia, the Customer shall make those licences and consents available to Ornuia prior to the relevant shipment.
- 5. Quality of Goods**
- 5.1 Ornuia warrants that on delivery the Goods shall conform in all material respects with the applicable Goods Specification.
- 5.2 Subject to clause 5.3, Ornuia shall, at its option, repair or replace any defective Goods or refund the price of any defective Goods in full if:
- (a) the Customer gives notice in writing within a reasonable time of discovery (but no later than 5 days from discovery) that some or all of the Goods do not comply with the warranty set out in clause 5.1 or of whole or partial non-delivery or shortages;
  - (b) Ornuia is given a reasonable opportunity of examining any allegedly defective Goods; and
  - (c) the Customer (if asked to do so by Ornuia) returns such Goods to Ornuia's place of business.
- 5.3 Ornuia 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 Ornuia's oral or written instructions as to the storage, handling or use of the Goods or (if there are none) good trade practice;
  - (c) the defect arises as a result of Ornuia following any drawing, design or specification supplied by the Customer;
  - (d) the defect arises as a result of Ornuia using any ingredients, packaging or other raw materials supplied by the Customer or sourced from a third party specified by the Customer for use by Ornuia in the manufacture or processing of the Goods (**Customer Supplied Materials**);
  - (e) the Customer alters or repairs such Goods without the written consent of Ornuia;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (g) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 These Conditions shall apply to any repaired or replacement Goods supplied by Ornuia.
- 5.5 The Customer must notify Ornuia in writing of any seizures of Goods for whatever reason and deliver full particulars to Ornuia within 5 Business Days of the date of the seizure supported by certificates signed by a recognised public health official or official of a recognised regulatory body giving all relevant details including any time-limits or other conditions and the reason for any seizure.

- 5.6 No warranty is given by Ornuu and Ornuu shall have no liability in respect of the following:
- (a) where the Goods are packaged under the Customer's own label or in accordance with the instructions of the Customer, that the information on the packaging of the Goods (for example the integration of technical data such as nutritional information for consumers and the identification of ingredients) complies with applicable laws in the respective country of sale;
  - (b) that the Goods may lawfully be supplied or offered for sale outside the country of delivery, unless supply for a particular country is expressly stated in the Goods Specification; or
  - (c) that the Goods are suitable for mixing, blending, compounding with or incorporating into other goods or products, unless expressly stated in the Goods Specification.
- 5.7 The Customer must observe (including before title to the Goods passes) storage, handling and transportation conditions suitable for the Goods and proper stock rotation in the case of all Goods and must not release Goods for sale or distribution where, because of their age or having regard to the time normally taken in the progress of Goods along the distribution chain, they could not reasonably be expected to reach the ultimate consumer in a fresh and wholesome state and before the end of their recommended shelf life.
- 5.8 The Customer must not obscure, remove, conceal or otherwise interfere with any markings or other indication of source or origin on any Goods or their labelling or packaging.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery to the Delivery Location.
- 6.2 Legal and beneficial title to the Goods shall not pass to the Customer until the earlier of:
- (a) Ornuu receives payment in full (in cash or cleared funds) for the Goods, 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, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods as Ornuu's fiduciary agent and bailee;
  - (b) not pledge or in any way charge by way of security the Goods;
  - (c) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Ornuu's property;
  - (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Ornuu's behalf from the date of delivery;
  - (f) notify Ornuu immediately if it becomes subject to any of the events listed in clause 17.2(b) or clause 17.2(c); and
  - (g) give Ornuu such information relating to the Goods as Ornuu may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Ornuu receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Ornuu's agent; and
  - (b) title to the Goods shall pass from Ornuu to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 17.2(b) or clause 17.2(c), then, without limiting any other right or remedy Ornuu may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) Ornuu may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irreversibly 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 them.

## **7. Supply of Services**

- 7.1 Ornuia shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 7.2 Ornuia shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Ornuia reserves the right to amend the Services 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 Ornuia shall notify the Customer in any such event.
- 7.4 Ornuia warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Customer's obligations**

- 8.1 In addition to the Customer's obligations set out elsewhere in these Conditions, the Customer shall:
  - (a) ensure that the terms of the Order and any applicable Goods Specification and/or Services Specification are complete and accurate;
  - (b) co-operate with Ornuia in all matters relating to the Goods and/or Services;
  - (c) provide Ornuia with such information and materials as Ornuia 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;
  - (d) obtain in good time and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services;
  - (e) comply with all applicable laws, including health and safety laws, data protection laws, employment and modern slavery laws, and anti-bribery and corruption laws (**Applicable Laws**);
  - (f) keep all materials, equipment, documents and other property of Ornuia (**Ornuia Materials**) at the Customer's premises in safe custody at its own risk, maintain Ornuia Materials in good condition until returned to Ornuia, and not dispose of or use Ornuia Materials other than in accordance with Ornuia's written instructions or authorisation;
  - (g) ensure that any Customer Supplied Materials are fit for purpose and that use of Customer Supplied Materials for the purpose of supplying the Goods does not cause Ornuia to infringe any applicable laws or any third party rights; and
  - (h) comply with any additional obligations as set out in the Goods Specification and/or Services Specification.
- 8.2 If Ornuia'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**) then:
  - (a) without limiting or affecting any other right or remedy available to it, Ornuia 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 Ornuia's performance of any of its obligations;
  - (b) Ornuia shall not be liable for any costs or losses sustained or incurred by the Customer arising from Ornuia's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - (c) the Customer shall reimburse Ornuia on written demand for any liabilities, costs, expenses, damages or losses sustained or incurred by Ornuia arising from the Customer Default.

## **9. Recall**

- 9.1 If either party is notified by a government or other legal authority that a recall of any Goods or any product containing Goods is required, requested or otherwise advisable as probably being needed, or establishes a need to recall due to non-conformity of Goods with the Goods Specification, it shall promptly give to the other party written notice of the same with full details.
- 9.2 The parties shall agree who is to take the lead role in co-ordinating the recall and the recall shall be carried out in a commercially reasonable manner with each party affording the other all reasonable assistance.

- 9.3 The costs of recalling Goods, including the cost of replacement quantities of recalled Goods, shall be borne as follows:
- (a) if the principal reason for the recall is Ornuua's negligence or failure to deliver Goods that conform with the Goods Specification, by Ornuua;
  - (b) if the principal reason for the recall of the Goods in question is the Customer's negligence or failure to store or otherwise treat the Goods in conformity with the Goods Specification and/or its failure to comply with the terms of the Contract, by the Customer; or
  - (c) if the recall of the Goods was legally required and the reason is not one of those set forth in clauses 9.3(a) or 9.3(b) above, by the parties equally.

## **10. Charges and payment**

- 10.1 The price for Goods and/or Services:
- (a) shall be the price set out in Ornuua's quotation or, if no price is quoted (or Ornuua's quotation is no longer valid), the price set out in Ornuua's acceptance of the Order or in Ornuua's invoice based on Ornuua's then current prices, which may change from time to time; and
  - (b) unless agreed otherwise in writing, shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods and all such costs and charges shall be invoiced to and payable by the Customer in addition to the price.
- 10.2 Any increase in costs or expenses arising from any act or omission or special requirement of the Customer or any modification to a Specification made at the Customer's request may be charged to the Customer.
- 10.3 Ornuua may invoice the Customer on or at any time after completion of delivery of the applicable Goods and/or Services.
- 10.4 The Customer shall pay each invoice submitted by Ornuua:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Ornuua and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Ornuua, and time for payment shall be of the essence of the Contract.
- 10.5 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 Ornuua to the Customer, the Customer shall, on receipt of a valid VAT invoice from Ornuua, pay to Ornuua 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.
- 10.6 If the Customer fails to make a payment due to Ornuua under the Contract by the due date, then, without limiting Ornuua's remedies under clause 17 (Termination), 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 10.6 will accrue each day at 4% a year above the European Central Bank's main refinancing rate from time to time, but at 4% a year for any period when that rate is 0% or lower. The Customer shall pay the interest together with the overdue sum.
- 10.7 Neither party shall have any right of set-off under the Contract.

## **11. Intellectual property rights**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services (other than Intellectual Property Rights in any Customer Supplied Materials) shall be owned by Ornuua.
- 11.2 The Customer provides the following warranties:
- (a) To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer warrants that use of such specification will not infringe any third party's Intellectual Property Rights.
  - (b) To the extent that the Goods are to be manufactured using Customer Supplied Materials, the Customer warrants that use of such Customer Supplied Materials will not infringe any third party's Intellectual Property Rights.
  - (c) Where the Goods are supplied in any packaging or containers designed by the Customer or which are marked in accordance with the Customer's instructions or requests, the Customer

warrants that such packaging, containers and markings will not infringe any third party's Intellectual Property Rights.

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

## **12. Grocery Supplies in Ireland and the UK**

- 12.1 **Ireland:** If the Customer is a relevant grocery goods undertaking for the purposes of the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 then, in respect of the supply of grocery goods by Ornuua, the terms of such Regulations shall apply as between Ornuua and the Customer and shall be deemed incorporated to the Contract.

- 12.2 **UK:** If the Customer is a Designated Retailer for the purposes of The Groceries (Supply Chain Practices) Market Investigation Order 2009 then, in respect of the supply of Goods by Ornuua, the terms of the Groceries Supply Code of Practice shall apply as between Ornuua and the Customer and shall be deemed incorporated into the Contract.

## **13. Confidentiality**

- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, 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 13; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **14. Data Protection**

- 14.1 Pursuant to Article 13 and/or Article 14 of the General Data Protection Regulation (GDPR), we, Ornuua, inform you, the Customer, of the handling of your personal data (contact data etc.) which we receive within the framework of our business relationship. The controller is Ornuua - [dataprotection@ornua.com](mailto:dataprotection@ornua.com). The legal basis for the processing of this personal data is specified in paragraphs (b) and (f) of Article 6(1) GDPR. The purpose of the data processing and our legitimate interest is the performance of the business relationship between us.
- 14.2 Your data will be kept for the duration of this business relationship (including electronically in our systems) and will subsequently be erased, subject, however, to any applicable statutory retention periods and unless we require the data for asserting our legal rights or exercising or protecting ourselves against any legal claims. If you consented to any other type of use, we will delete the data as soon as you revoke your consent. Only our employees and service providers that require the data for the fulfilment of their agreed responsibilities have access to the data. The data may be transmitted to public bodies where required by law (e.g. investigative authorities). If certain prerequisites pursuant to Article 15 to Article 18 GDPR are fulfilled, you have an access right, right for correction or deletion of your personal data and a right to limit our processing of your data. Furthermore, you can object to the further processing of your personal data pursuant to Article 21(1) GDPR. Pursuant to Article 77(1) GDPR, you also have the right to file a complaint with a supervisory authority if you are of the opinion that the processing of your personal data infringes GDPR.
- 14.3 For further information regarding our processing of your personal data, please refer to Ornuua's Privacy Policy, available here: [www.ornua.com/privacy-policy](http://www.ornua.com/privacy-policy).

**15. Indemnity: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 15.1 The Customer shall indemnify Ornuva against all liabilities, costs, expenses, damages and losses suffered or incurred by Ornuva in connection with:
- (a) any breach of clause 5.7 by the Customer (re treatment of Goods etc.);
  - (b) any breach of clause 8.1(e) by the Customer (compliance with Applicable Laws);
  - (c) any breach of warranty by Customer under clause 11.2 (re Intellectual Property Rights).
- 15.2 This clause 15 shall survive termination of the Contract.

**16. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 16.1 Nothing in the Contract shall limit or exclude either party'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; or
  - (c) any matter in respect of which it would be unlawful to exclude or restrict liability.
- 16.2 Subject to clause 16.1, Ornuva shall not be liable under or in connection with the Contract, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, punitive or special damages, or any indirect or consequential loss or damage.
- 16.3 Subject to clause 16.1 and 16.2, Ornuva's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the value of the total charges paid or payable for the applicable Goods and/or Services under the Contract.
- 16.4 This clause 16 shall survive termination of the Contract.

**17. Termination**

- 17.1 Without affecting any other right or remedy available to it, Ornuva may terminate the Contract by giving the other party not less than 3 months' written notice.
- 17.2 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:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
  - (b) the other party is the subject of an insolvency event or action; or
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 17.3 Without affecting any other right or remedy available to it, Ornuva 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) the Customer's financial position deteriorates to such an extent that in Ornuva's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - (c) the Customer (being an individual) dies or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs; or
  - (d) there is a change of Control of the Customer.
- 17.4 Without affecting any other right or remedy available to it, Ornuva may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Ornuva if the Customer fails to pay any amount due under the Contract on the due date for payment, if the Customer becomes subject to any of the events listed in clause 17.2(b) or clause 17.2(c), or if Ornuva reasonably believes that the Customer is about to become subject to any such event.



## **18. Consequences of termination**

- 18.1 On termination of the Contract the Customer shall immediately pay to Ornuva all of Ornuva's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, Ornuva shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 18.2 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.
- 18.3 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.

## **19. Force majeure**

19.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

19.2 Provided it has complied with clause 19.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the other party may terminate the Contract by giving 2 weeks' written notice to the Affected Party.

## **20. General**

20.1 **Assignment and other dealings.**

- (a) Ornuva may at any time assign, 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.
- (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 without the prior written consent of Ornuva.

20.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if a company) or its principal

place of business (in any other case) or such other address as that party may have specified to the other in writing in accordance with this condition, and shall be delivered to such address personally or sent by pre-paid post, recorded delivery, commercial courier or email.

- (b) 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.
- 20.3 **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.
- 20.4 **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 any right or remedy provided under the Contract or 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 Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.5 **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.
- 20.6 **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. Except as expressly stated in the Contract, no party makes any express or implied warranty or representation.
- (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 for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 20.7 **Third parties' rights.** The Contract does not give rise to any rights for a third party to enforce any term of the Contract.
- 20.8 **Variation.** 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 the parties (or their authorised representatives).
- 20.9 **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 Ireland.
- 20.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Ireland 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.

***Ornua Co-operative Limited  
Standard Terms and Conditions of Sale  
(for Goods and/or Services)  
v.01.11.2019***

***Effective from 1<sup>st</sup> November 2019 until further notice***