



Essence Group Pty Ltd

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Terms and Conditions

In these terms and conditions:

'Agreement' means this agreement including Appendix 1 and all attachments, appendices, schedules and annexures referred to therein and all such documents are deemed to be incorporated by reference and form part of the terms of this agreement;

'Goods' means all items described in any Purchase Order and all packaging, instructions, warnings, warranties and other materials and services normally included with such Goods.

'Purchase Order' means a written order submitted by Essence Group to Vendor requesting that Vendor supply a specified number of Goods.

'you', 'your' and similar expressions, refer to you, our vendor or proposed vendor; and

'we', 'us' and similar expressions, refer to Essence Group Pty Limited (ABN 97 124 669 790), 35 Norfolk Avenue, South Nowra, NSW 2541 +61 (2) 9192 3300.

1. Application of terms and conditions

1.1 Every shipment and sale of Goods from Vendor to Essence Group shall be subject to this Agreement, unless otherwise agreed in writing signed by both Essence Group and Vendor with the exception that Essence Group may vary the terms of this Agreement in its Purchase Order to Vendor, and such variation shall be deemed to be accepted by Vendor in respect of that Purchase Order if that Purchase Order is completed by the Vendor.

1.2 The terms in this Agreement are the only terms upon which Essence Group is prepared to deal with Vendor to the entire exclusion of all other terms and conditions. No other terms or conditions endorsed upon, delivered with or contained in Vendor's quotation, acknowledgement or acceptance of the Purchase Order, specification, invoice or other document shall form part of this Agreement and Vendor waives any right which it might otherwise have to rely on any such terms.

1.3 This Agreement does not oblige Essence Group to order any Goods from the Vendor.

2. PURCHASE ORDERS

2.1 A binding contract for the supply of Goods only arises when Vendor receives either a Purchase Order signed by an authorised representative of Essence Group or (where electronic trading has been implemented) an electronic Purchase Order that complies with all the security and verification procedures established by Essence Group.

2.2 Vendor is deemed to have accepted a Purchase Order if Vendor does not reject the Purchase Order within 12 hours of receiving it. Vendor may only dispatch Goods to Essence Group in accordance with the Purchase Order.

2.3 Vendor shall mark all invoices, bills of lading, and packing lists to show legibly the complete Purchase Order and material number/s to which they relate.

2.4 Vendor will ensure that all packing of the Goods complies with all requirements of the relevant carrier and Essence Group, and the packing cost is deemed to be included in the price of the Goods.

3. DOCUMENTS

On the date any Goods are dispatched, Vendor shall send a packing list showing the number and contents of each package and an invoice to the "Bill To" address on the face of the Purchase Order and original bill of lading. The actual scale weights or approved shipping weights shall be shown on all bills of lading and other shipping documents. Vendor shall also comply with clause 22 (Shipping Documents).

4. PAYMENT

4.1 Unless otherwise agreed in writing (and without prejudice to Essence Group's right to reject any Goods under Clause 12 or otherwise) Essence Group shall not be obliged to pay any invoice until after the Goods are actually received at the delivery address on the relevant Purchase Order **and** an authorised Essence Group employee or agent has signed the delivery confirmation or bill of lading or other shipping document acknowledging that receipt.

4.2 Vendor is only entitled to issue an invoice to Essence Group for Goods delivered in accordance with the relevant Purchase Order and this Agreement.

4.3 Invoices will be paid within 60 days of the end of the month in which the Goods are received, or such other time period agreed by the parties in writing, provided that the invoice is correctly rendered, and complies with the Purchase Order. If there is any discrepancy or error in any invoice, or the Vendor does not comply with this Agreement, Essence Group may carry over payment for a further 30 days or later, until any such discrepancy or error has been resolved or corrected, whichever is the later.

4.4 Payments from Essence Group are transmitted by electronic funds transfer (EFT) only. Vendor must submit its bank details on company letterhead quoting its ABN.

4.5 Vendor will full and accurately complete the 'Vendor Set up' document issued by Essence Group and sign it by an authorised signatory (no electronic signatures) identifying the signatory's name and title.

5. DISCOUNTS AND REBATES

The value to Essence Group of any discount, rebate or refund of any description shall be determined by applying the discount, rebate or refund to the full price of the Goods, before deduction of any other discounts or rebates to which Essence Group is, has been or may later become entitled. When Essence Group returns Goods for refund in any circumstances, the refund due to Essence Group shall be the price of the returned Goods excluding any discounts or rebates that have been given in respect of them. For the purposes of determining rebates payable, the Vendor must furnish Essence Group forthwith after the conclusion of each month during continuance of these Terms, with a full and accurate account (in such form as may reasonably be required by Essence Group) of the quantity of the Product sold by the Supplier during that month to Essence Group.

6. PRICE CHANGES

6.1 The Vendor's prices for the Goods cannot be increased by Vendor or include any additional charges due to increased costs or changes in law other than in accordance with this clause and any price increases notified by Vendor to Essence Group otherwise than in accordance with this clause shall have no effect and are unenforceable.

6.2 Any price increases for Goods, if any, must be notified in writing by Vendor to Essence Group (together with detailed justification for the increase) not less than 180 days prior to either of July 1 or January 1 of each year and any such price increase will only take effect from the relevant date of July 1 or January 1 following the notification. However, prices quoted for Goods and any Purchase Order placed by Essence Group at the agreed price must remain unchanged and any subsequent on-costs that were not calculated as part of the quotation price will not be charged or payable. This price notification period must be strictly adhered to by Vendor and any breach entitles Essence Group to immediately terminate this Agreement and the relevant Purchase Order.

6.3 Any price decreases must be communicated to Essence Group and will have immediate effect and will also apply to the quantity of stock held by Essence Group in its warehouse at the time such price decrease is effected and a credit will automatically arise and be applied for the same. The vendor will provide a credit for such price reduction and such credit will be applied against the outstanding payable balance to the vendor.

6.4 Unless the parties specifically agree to the contrary in writing, the prices for Goods include delivery costs, all taxes imposed on Vendor, all importation costs including, but not limited to, customs duty and related customs charges, freight forwarding costs, inland charges, ocean and/or air freight costs, quarantine charges, fumigation fees, tail gate fees, bond store and terminal storage fees and any associated agency fees.

6.5 Essence Group shall be entitled to the benefit of any decrease in Vendor's price due to any of: (i) promotional sales or special offers as made generally available from time to time; (ii) meeting or exceeding any quantity or dollar value targets as agreed between the parties; or (iii) any price decline effective after Vendor's acceptance of a Purchase Order.

6.6 Notwithstanding this clause 6:

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- 6.6.1 The prices for those Goods which are regarded by Essence Group as new items or new lines shall not change for the period of 12 months from the date that Essence Group places a Purchase Order for such Goods until the following July 1 or January 1, whichever date is the closest, after the expiration of the 12-month period; and
- 6.6.2 Prices for items that are featured in any catalogue of Essence Group's customers must remain unchanged for the duration of any such catalogue; thereafter any price changes shall occur in line with this clause 6.
- 6.7 Vendor is not entitled to charge for any advance payments nor split payments in advance.
- 6.8 For as long as the Vendor supplies the Products to Essence Group, the Vendor must use best endeavours:
- 6.8.1 to reduce the cost to the Vendor of supplying the Goods under these Terms; and
- 6.8.2 to achieve supply efficiencies in manufacturing, handling and delivering the Goods, to the greatest extent that it is commercially practical to do so.
- 6.9 The Vendor will work with Essence Group and aim to achieve the following targets in each contract year, in case of an ongoing supply of goods / services:
- 6.9.1 implementation of a savings of no less than 2% of Essence Group's annual spend (net of all discounts and rebates) with the Vendor; and
- 6.9.2 identification of a list of potential cost reduction opportunities equivalent to no less than 2% of Essence Group's annual spend (net of all discounts and rebates) with the Vendor.
- 7. SET OFF**
- Without prejudice to any other right or remedy, Essence Group reserves the right to set off against monies owed to Vendor any amount owing for any matter at any time from the Vendor, including any outstanding rebate, discount, refund, marketing fund, promotional support fee or any other miscellaneous charge, against any amount payable by Essence Group to Vendor under this Agreement or otherwise from time to time.
- 8. LATE DELIVERY & CANCELLATION**
- 8.1 Essence Group may at any time cancel any Purchase Order, or part thereof, where the Goods are not received by Essence Group by the 'Ship Date' shown on the relevant Purchase Order, without cost or further obligation to Vendor. Vendor shall notify Essence Group immediately if any Goods may not be delivered to Essence Group before the relevant 'Ship Date'. Vendor shall dispatch back orders only if agreed in advance in writing by Essence Group and only if freight costs have been paid by Vendor. Any charges or penalties incurred or payable by Essence Group to third parties due to the Goods not being delivered by the 'Ship Date' will be immediately payable by the Vendor. Essence Group also reserves the right to cancel or suspend any purchase order, or part thereof, where the products are not in accordance with the specifications or are defective in workmanship or material or are not fit for purpose for which they have been purchased by Essence Group.
- 8.2 Delivery performance shall be assessed on the following basis:
- 8.2.1 the original agreed delivery date for both standard and exception orders will serve as the benchmark for performance measurement unless both parties agree a revised date will be the benchmark. Vendor should report any changes to delivery dates within one week of receiving orders.
- 8.2.2 Essence Group and the Vendor agree that Delivery in Full On Time (DIFOT) is the measure of supply chain performance, and further agree that they will strive continuous improvement and Class A / Best Practice which is better than 95% of DIFOT. DIFOT will be measured in accordance with clause 8.3.
- 8.3 DIFOT is calculated based on the number of deliveries of the Products that are considered a HIT in proportion to the total number of deliveries of the Products from the Supplier in a given month. Deliveries are rated as a HIT on the following conditions:
- 8.3.1 A delivery is considered a HIT when all of the following criteria are met;
- 8.3.1.1 Delivery is received on the agreed date or up to 5 working days prior to the agreed date;
- 8.3.1.2 the quantity delivered is the quantity ordered plus or minus 5%;
- 8.3.1.3 the Product is delivered with all the documentation i.e. certificate of analysis and delivery docket; and
- 8.3.1.4 the Product meets the agreed specification.
- 8.3.2 DIFOT will be measured across parameters in clause 8.3.1.
- 8.4 Target for performance is greater than 95% of Product delivered in a month that meets the agreed specification.
- 8.5 The Supplier will compensate Essence Group in full without limit all direct and in-direct costs and penalties incurred as a direct result of the DIFOT MISS as defined in clause 8.3.
- 9. DELIVERY, RISK & TITLE**
- 9.1 Goods delivery requirement: (i) delivered materials request 75% of minimum shelf life remaining at time of receipt, unless it is approved by Essence. (ii) Where possible purchased quantities to be fulfilled by a single manufacturer Lot. Split deliveries of more than 2 manufacturer Lots will need Essence approval before being supplied. (iii) All deliveries request to be accompanied with manufacturers Certificate of Analysis (CofA) of certificate of compliance. CofA should reference date of manufacture, best before date, manufacturers product code and manufacturer lot number. Ideally CofA would be on the manufacturers letter head, approved by quality signatory. (iv) Stock labels to include manufacturer's lot, manufacturer's product code, product name, (v) failure to meet the above may result in non-acceptance with full or part rejection.
- 9.2 Vendor's delivery of the Goods will occur, and risk of loss will pass: (i) if Essence Group is arranging carriage, once the Goods are loaded aboard the truck or other mode of transport, or (ii) otherwise, once the Goods has been received at the "Ship To" or delivery address on the applicable Purchase Order and an authorised Essence Group employee or agent has signed the bill of lading or other shipping document acknowledging that receipt and upon inspection, which shall be no later than 14 days after delivery of the Goods to Essence Group.
- 9.3 Title in the Goods passes to Essence Group on payment as set out in the Purchase Order, but if Essence Group pays any part of the Goods price before delivery, then title passes upon such early payment.
- 10. COMPLIANCE WITH LAWS & PRODUCT SAFETY**
- 10.1 Vendor warrants that all Goods are manufactured, processed, packaged, labelled, marked, tagged, tested, certified, registered, inspected, shipped and sold in compliance with all applicable laws, regulations and requirements of Australia (as relevant) including standards, codes of practice and regulations relating to health, safety, performance, marking, labelling, transport, handling and storage, weights, measures and country of origin designation.
- 10.2 Vendor agrees to execute and furnish to Essence Group, on request, all reports, certifications, guarantees and other documents regarding compliance with such laws, regulations and requirements and if any non-compliance is apparent, Vendor will do all things necessary to rectify such non-compliance and ensure compliance for all Goods at all times.
- 10.3 Vendor agrees to provide Essence Group with a list of all components and ingredients of the Goods, including materials, ratings, identification numbers, concentration, and all details for Essence Group to assess the Good's safety and compliance with such laws, regulations and requirements. This includes a Safety Data Sheet for all hazardous chemicals and other chemicals when required.
- 10.4 Vendor warrants to Essence Group that all Goods will:
- 10.4.1 be free from any contamination and safe and without risk to health and safety;
- 10.4.2 conform with the requirements, specifications and quantities stated in the relevant Purchase Order and correspond in quality with any samples provided to, and accepted by, Essence Group;
- 10.4.3 be newly manufactured, free from defects in workmanship and materials, of merchantable quality, fit for the purpose and use for which they are acquired;
- 10.4.4 be manufactured and supplied to Essence Group in accordance with Essence Group's product specifications as may be provided to

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the Vendor either at the time or prior to the placement of each purchase order;

- 10.4.5 be free from any lien or encumbrance and Vendor shall have good and marketable title to them; and
- 10.4.6 shall, for the lifetime of the Goods, perform at a level consistent with Vendor's specifications and representations regarding functionality and suitability for purpose and otherwise comply with the terms of any product warranty supplied with the Goods.
- 10.5 Essence Group reserves the right to require Vendor to provide certification of compliance of Goods including any test results, within 7 days of request from Essence Group.
- 10.6 Vendor undertakes to diligently monitor the safety of Goods and shall do all things necessary to:
- 10.6.1 comply with all applicable health and safety laws, legislation, regulations and standards and carry out specific monitoring and testing procedures, including any that Essence Group may request, to ensure compliance with the same;
- 10.6.2 maintain comprehensive and systematic records of all such monitoring and testing procedures and allow Essence Group to have access to the same and provide copies of such records on request;
- 10.6.3 implement batch marking where reasonable or when requested by Essence Group, in order to enable Essence Group to differentiate between production batches and for Vendor and Essence Group to comply with applicable health and safety laws, regulations standards and requirements;
- 10.6.4 inform Essence Group promptly in writing (A) of all information which Vendor becomes aware concerning the safety of any Goods; or (B) if the Goods contain or may contain PVC or Asbestos in any form and in any quantity, or any substances listed in the Essence Group Restricted Substances List.
- 10.7 Vendor will allow Essence Group access to the manufacturing and/or storage premises of Vendor at all reasonable times to permit Essence Group to monitor compliance with this clause. Vendor agrees to make any changes to the methods of production, storage and transportation of Goods to ensure conformity with all applicable product specifications, health and safety laws and standards and, at its own cost, to rectify all non-conforming Goods.
- 10.8 Vendor warrants that it will:
- 10.8.1 provide the Goods at all times exercising due care skill and judgement in a proper workmanlike manner and in accordance with Essence Group specifications;
- 10.8.2 ensure that all methods and procedures employed in supplying the Goods are ethical and are, where possible, best practice methods and procedures currently employed in the industry;
- 10.8.3 ensure that only qualified and experienced personnel work in respect of the provision of the Goods;
- 10.8.4 prepare and submit to Essence Group such reports as are required regarding Vendor's performance as and when required by Vendor; and
- 10.8.5 ensure that no act or omission of Vendor may or may be likely to prejudice or harm the interests of Essence Group.
- 10.9 In relation to the provision of any services by Vendor to Essence Group in relation to this Agreement, Vendor warrants that:
- 10.9.1 it has the resources, skill, competence, expertise, experience, knowledge, ability, licences, permissions, permits and authority necessary to supply the services and Goods in accordance with this Agreement; and
- 10.9.2 will provide personnel needed to ensure Vendor effectively meets its obligations under this Agreement and such personnel shall be duly qualified and will perform their obligations in a careful, skilful and diligent manner.

11 ABILITY TO SELL

Vendor warrants and represents to Essence Group that there is no impediment or restriction which prohibits or prevents Vendor from selling the Goods to Essence Group or prohibits or prevents Essence Group from re-selling the Goods as it considers appropriate.

12 REJECTION

- 12.1 Essence Group has the right, at any time (including after it has accepted the Goods) to reject and either return to the Vendor or hold

at Vendor's risk and expense, any Goods, shipment or part thereof that:

- 12.1.1 is in excess of the quantities specified in the Purchase Order;
- 12.1.2 is non-conforming, or allegedly contains any defect or inadequate warnings or instructions;
- 12.1.3 violates or is alleged to violate any applicable law, regulation, standard or court or administrative order or any patent, trade name, trade mark, copyright, design right, unregistered design right or other right; or
- 12.1.4 has been returned by customers of Essence Group for any reason.
- 12.2 Neither the payment of any invoice nor the passing of property shall limit Essence Group's right to reject Goods as aforesaid.
- 12.3 Vendor hereby assumes, and shall bear, all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping or returning any rejected Goods.
- 12.4 In respect of any shipment of Goods or portion thereof that Essence Group rejects, Essence Group is automatically entitled to a full refund for the same from Vendor, which sum is deemed immediately due and payable and satisfied, at Essence Group's election, by any of the following: (i) a credit note for such amount; or (ii) replacement of the Goods; or (iii) setoff against any monies owed by Essence Group to Vendor; or (iv) payment of such monies by Vendor to Essence Group.

13 RECALLS

If any Goods are the subject of a recall, Vendor shall be responsible for the recall and liable for, and pay on demand to Essence Group, all expenses, costs and losses incurred by Essence Group in relation thereto, including:

- 13.1 recalling the Goods and promotion of the recall to the market;
- 13.2 returning the Goods to Vendor, rework and/or disposal, in accordance with Essence Group instructions;
- 13.3 compensating and reimbursing customers, end-consumers and any other affected members of the supply chain; and
- 13.4 the net landed cost to Essence Group of unsold Goods.
- 13.5 The Vendor shall assist Essence Group with its reporting commitments, including but not limited to, the disclosure of other local customers and countries and regions in which the recalled product, or similar models, were also supplied.

14 INDEMNITY

Vendor hereby indemnifies, defends and hold harmless Essence Group from and against any and all claims, actions, damages, liabilities, losses, fines, penalties costs and expenses (including legal fees) in respect of any actual or alleged:

- 14.1 infringement of any patent, trade name, trade mark, copyright, design right, unregistered design right or other right relating to any Goods;
- 14.2 death of or injury to any person, damage to any property, or any other damage or loss suffered by any person, claimed to result in whole or in part from any actual or alleged defect in such Goods whether latent or patent, including any alleged failure to provide adequate warnings or instructions;
- 14.3 any breach of this Agreement or any warranty herein by Vendor, its officers, employees or agents;
- 14.4 any damage, injury or loss caused by or resulting from any act or omission of Vendor, its officers, employees, agents or suppliers;
- 14.5 violation of any law, statute or ordinance or any government administrative order, rule, regulation or standard relating to the Goods, its manufacture, shipment, use or sale; and
- 14.6 any negligence, misconduct, omission, act or breach of this Agreement by the Vendor.

This Agreement, the above indemnity and any obligations of Vendor in this Agreement shall not be affected or limited in any way by any express or implied warranties from Essence Group to its customers, or by any other act or omission of Essence Group.

15 INSURANCE

Vendor shall comply with the provisions of Paragraph A in **Appendix 1**.

16 GOODS AND SERVICES TAX ("GST")

- 16.1 Unless otherwise expressly stated, prices for Goods include GST. Terms used in this Clause which are defined have the same meaning



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as in the A New Tax System (Goods and Services Tax) Act 1999, as amended (GST Act),.

- 16.2 In relation to any GST payable for a taxable supply under this Agreement, Essence Group will pay the GST subject to Vendor providing a tax invoice.
- 16.3 If Essence Group pays GST to Vendor in circumstances where GST was not properly chargeable Vendor shall immediately, upon becoming aware or being notified of the same (whether notification is received from Essence Group or otherwise) pay to Essence Group the amount of such GST and Vendor shall defend, indemnify and hold harmless Essence Group from and against any and all claims, actions, damages, liabilities, losses, fines, penalties, costs and expenses (including legal fees) incurred as a result.

17 SOCIAL RESPONSIBILITY COMPLIANCE

Vendor shall comply with the provisions of Paragraph B in **Appendix 1**.

18 PAPER AND WOOD COMPLIANCE

Vendor shall comply with the provisions of Paragraph C in **Appendix 1**.

19 PACKAGING

Vendor will do all things necessary to ensure that:

- 19.1 undue and unnecessary use of materials is avoided, and recycled materials are used whenever appropriate;
- 19.2 information required for Australian Packaging Covenant commitments, including data on packaging quantity and type, is provided on a timely basis and as requested by Essence Group; and
- 19.3 the sourcing, design and materials of packaging is improved and complies with Essence Group's policies and sustainable packaging initiatives and Australian Packaging Covenant commitments.

20 FOOD, FOOD INGREDIENTS & PACKAGING

20.1 Where the Supplies include food or food ingredients Vendor must provide:

- 20.1.1 an identifying product code for all Supplies before supply;
- 20.1.2 sufficient details in respect of each constituent to enable Essence Group to comply with the Australia New Zealand Food Standards Code, including any changes, a reasonable time before supply; and
- 20.1.3 a lot code identifier for all Supplies at the time of supply.
- 20.2 Goods must be packed to avoid damage during delivery or collection, loading and unloading. Seller must mark all hazardous Goods with international danger symbols, show the name of any hazardous material in English and also provide emergency material in English in the form of written instructions, labels or markings.
- 20.3 Vendor must comply with any packaging requirements or product specifications required by law or notified by Essence Group and ensure that the packaging is clear of all traces of phthalate and adipate plasticiser esters.

20.4 Vendor will do all things necessary to ensure that:

- 20.4.1 undue and unnecessary use of materials is avoided, and recycled materials are used whenever appropriate;
- 20.4.2 information required for Australian Packaging Covenant commitments, including data on packaging quantity and type, is provided on a timely basis and as requested by Essence Group; and
- 20.4.3 the sourcing, design and materials of packaging is improved and complies with Essence Group's policies and sustainable packaging initiatives and Australian Packaging Covenant commitments.

21. PRODUCT QUALITY

Vendor will do all things necessary to ensure that it:

- 21.1 maintains and enforces a quality control system regarding the manufacture and supply of Goods that is of a standard acceptable to Essence Group, at sole its discretion;
- 21.2 provides details of its Quality Control System, inspection reports and other documentation on request from Essence Group;
- 21.3 makes changes to its Quality Control System if requested by Essence Group; and
- 21.4 reports to Essence Group any non-conformities identified.

22. SHIPPING DOCUMENTS

Vendor shall comply with the provisions of Paragraph D in **Appendix 1**.

23. TERMINATION

Without limiting Clause 25:

- 23.1 Essence Group may terminate this Agreement at any time by giving 1 month's prior written notice to Vendor.
- 23.2 Upon any breach by Vendor of this Agreement, Essence Group, in its sole discretion, reserves the right to: (i) terminate this Agreement with immediate effect by giving written notice of such termination to Vendor; (ii) terminate its relationship with any of the Vendor's subcontractors/suppliers; (iii) cancel any outstanding Purchase Orders; and (iv) return or revoke acceptance of affected Goods and/or require corrective action to be taken.

24. CONFIDENTIALITY

The terms of this Agreement are strictly private and confidential at all times and Vendor must keep confidential, the terms of this Agreement, Purchase Orders, trade secrets and any information of Essence Group in whatever form received by Vendor (**Confidential Information**) and may only use Confidential Information for the purposes of this Agreement not disclose it to any third party.

25. REMEDIES

The exercise of any remedy herein shall be without prejudice to any other right or remedy available to either party. The termination of this Agreement will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of, this Agreement, nor shall it affect any provision of this Agreement which is expressly or by indication intended to continue in force after such termination.

26. BEST PRICE ASSURANCE

26.1 Vendor acknowledges that the pricing for the Goods offered to Essence Group including any price changes that are implemented by Vendor or from time to time are, and will always be, the lowest net prices and terms offered by Vendor to any customer, dealer or reseller, including super-stores and mail-order companies, in Australia and New Zealand. If Vendor offers pricing to any customer, dealer or reseller lower than the pricing offered to Essence Group, then Vendor must offer that lower pricing to Essence Group for the same period.

26.2 Vendor undertakes to provide the best warehouse allowances and settlement discounts available.

26.3 The Vendor confirms that the prices for the Goods provided to Essence Group are the lowest prices available to any importer in Australia and that Essence Group will not be disadvantaged in any competitive bid as a consequence of any other Australian importer, undertaking pricing from a lower cost base. Vendor understands that any subsequent knowledge to the contrary is likely to prejudice Essence Group status as a supplier.

27. PERSONAL PROPERTY SECURITIES ACT 2009

Vendor will not register a financing statement in relation to the supply of Goods on the Personal Property Securities Register and will immediately, upon Essence Group's request, remove any financing statement so registered.

28. WAIVER

Any failure by either party to require performance of any obligations by the other party under this Agreement will not affect the first party's right to require that obligation to be performed at a later time. A waiver by either party of a breach of any part of this Agreement will not amount to a waiver of any subsequent breach.

29. INTELLECTUAL PROPERTY RIGHTS

29.1 Vendor acknowledges and agrees that Essence Group shall be the sole and exclusive owner of all intellectual property rights related to any Goods and other works, developed, made, written, created, discovered or designed by Vendor, its employees, agents or suppliers, in the course of, or for the purpose of, providing the Goods and any services (including all samples, drafts, moulds, artwork, designs, film and proofs).

29.2 Except for the purposes of this Agreement, Vendor is not permitted to do any of the following, whether directly or indirectly through another person or entity, without the prior written consent of Essence Group:

28.2.1 reproduce, manufacture, whether for sample purposes or otherwise, any product or reproduce, copy or display the image of any product; or

28.2.2 giveaway, deal with, or sell any product;

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- the intellectual property rights in respect of which, belong to Essence Group or any of its related entities.
- 29.3 Vendor must return all product, documents and other materials, the intellectual property rights in respect of which belong to Essence Group, immediately on request from Essence Group or otherwise upon termination of this Agreement.
- 29.4 In respect of Artwork products developed or created by Vendor on behalf of Essence Group:
- 28.4.1 'Artwork' means all drawings, designs, logos and any other artistic or literary works to be created in any format (including electronic) by or on behalf of Vendor for use in respect of packaging and labelling of Goods under this Agreement.
- 28.4.2 Vendor will be responsible for all costs associated with the creation or production of any Artwork and related blocks.
- 28.4.3 Essence Group is deemed to automatically own all intellectual property rights in any Artwork and shall own all blocks and if any rights exist with Vendor or its employees or agents, then such rights shall be deemed to be assigned to Essence Group on their creation.
- 28.4.4 If Vendor engages any subcontractor to create any part of the Artwork, Vendor will obtain all assignments necessary to ensure that Essence Group is the owner of all intellectual property rights in the Artwork.
- 28.4.5 Vendor waves, on behalf of itself and its employees and agents, its moral rights in respect of any Artwork and consents to Essence Group use of the Artwork without any attribution as to authorship and so that Essence Group is free to modify, alter, exploit and use the Artwork for any purpose and in any manner whatsoever.
- 28.4.6 Vendor warrants that it has not infringed and will not infringe any third-party rights in the creation or production of any Artwork and that Essence Group will not infringe any third party's rights in exploiting the Artwork.
- 29.5 Except as designated or approved by Essence Group in writing beforehand, Vendor shall not use any trademarks, trade names, product or packaging trade dress, brand names, corporate names, labels, product, visual design, product or package designs or any confusingly similar variations thereof which may now or hereafter be designated by Essence Group for use in connection with the manufacture of the Goods (collectively called "Essence Group Trademarks").
- 29.6 Vendor acknowledges that Essence Group or any of its related entities or affiliates own (or have the right to use) all right, title and interest in and to any Essence Group Trademarks and that Vendor shall not obtain any right, title or interest in or to any Essence Group Trademarks by virtue of this Agreement.
- 29.7 Vendor may not use, adopt, register, appropriate or attempt to register as a trademark, name or design any word, design, symbol or emblem which is identical or similar to any Essence Group Trademarks, whether during the term of this Agreement or after its termination.
- 29.8 Vendor agrees to cooperate fully with the registration of any new trademark or trade names by Essence Group or its related entities.
- 29.9 Upon termination of this Agreement, Vendor shall immediately cease all use of Essence Group Trademarks or any similar visual design, names, design or marks and shall not manufacture or sell or enter into any agreement with any third party to manufacture or supply goods under Essence Group Trademarks or any similar variations thereof.
- 29.10 Essence Group shall own the exclusive right to the trade dress, visual design and copyrights in the non-functional aspects of the Goods and any packaging for the Products.
- 29.11 Vendor agrees that it shall not during or after the term of this Agreement manufacture or sell any goods which are the same, similar to, or likely to be confused with the trade dress, product configuration, visual design or copyrighted aspects of the Goods.
- 29.12 All intellectual property rights in the Goods including but not limited to all invention rights, patent rights, trade secret rights, utility model rights as well as any design or development work relating to the Goods or improvements made to the Goods by Essence Group or any of its related entities or affiliates is the exclusive property of Essence Group or its related entities or affiliates.
- 29.13 Vendor shall promptly sign all necessary documents, as requested by Essence Group or any of its related entities or affiliates to give effect to this clause.
- 29.14 Vendor recognises and acknowledges that Essence Group would suffer irreparable injury from the actual or threatened breach of this clause and therefore Vendor hereby agrees that Essence Group shall have the right to obtain injunctive relief against any such actual or threatened breach, as well as the right to pursue all of its other remedies in equity and at law.
- 29.15 Vendor indemnifies and holds harmless Essence Group against any loss, cost, expense or damage Essence Group may suffer (including, without limitation, legal costs) in relation to any breach of this clause.
- 30. ACKNOWLEDGEMENT OF ESSENCE GROUP'S DISTRIBUTION STATUS**
- 30.1 Vendor acknowledges that Essence Group is a contract manufacturer of health and nutrition products in Australia and that Essence Group sells product to wholesalers & retailers in Australia. Vendor acknowledges Essence Group does not sell direct to the end consumer.
- 30.2 Vendor confirms that all models, designs, artwork provided to Essence Group are exclusive to Essence Group in Australia and New Zealand.
- 30.3 Vendor will support Essence Group's position in the market as an importer, manufacturer and distributor and will advise Essence Group if Vendor is approached directly by health and nutrition product manufacturers and distributors, major retail chains, wholesalers, department stores and major grocery retailers or their trading representatives.
- 31. JURISDICTION & MISCELLANEOUS**
- This Agreement and all Purchase Orders and agreements for the sale of Goods by Vendor to Essence Group shall be deemed to have been made in New South Wales and shall be governed by the laws in force in the state of New South Wales. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the Courts in New South Wales.
- 32. COMPLIANCE WITH ANTI-CORRUPTION & MODERN SLAVERY LAWS**
- 32.1 Essence Group and Vendor agree to comply with all applicable anti-corruption and modern slavery laws and to provide reasonable assurances to each other as may be requested from time to time that each is acting in an ethical and lawful manner.
- 32.2 Vendor acknowledges that Essence Group employees may not, directly or indirectly, give, offer, accept, or receive gratuities (whether to or from government officials or private parties) and offering, giving, soliciting or receiving any form of bribe or under-the-table payment, including unauthorised gifts, is prohibited.
- 32.3 Vendor shall promptly report actual or suspected violations of this clause to Essence Group.
- 33. TRADE LAW COMPLIANCE**
- Vendor will comply with all applicable trade, import and export control laws of Australia and any other applicable government authority (**Export Laws**). Vendor represents that it is not on the United States (U.S.) Treasury Department list of Specially Designated Nationals, the U.S. Department of Commerce Denied Persons List or Entity List, or other export control lists of the U.S. or other country. Vendor will not source Goods or products, in whole or in part:
- 33.1 from any country subject to United States embargo or similar export restrictions (including, without limitation, Cuba, Iran, Syria, Sudan and North Korea or national or resident thereof); or
- 33.2 from anyone on the U.S. Treasury Department list of Specially Designated Nationals, the U.S. Department of Commerce Denied Persons List or Entity List, or other export control lists; or
- 33.3 for any purpose prohibited by Export Laws.
- 34. ANTI-BRIBERY**
- 34.1 The Vendor agrees that it shall:
- 34.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti - bribery and anti - corruption including but not limited to the Bribery Act 2010 (all of the aforesaid being "Relevant Requirements");

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- 34.1.2 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 34.1.3 on request by Essence Group certify to Essence Group, in writing, signed by an officer of the Vendor, compliance with this Condition by the Seller and all persons associated with it. The Seller shall provide such supporting evidence of compliance as Essence Group may reasonably request;
- 34.1.4 warrants that neither it nor, to its knowledge, its officers, employees, nor any person involved by or for it in the performance of any Contract, is a Sanctioned Person; and
- 34.1.5 comply with Economic Sanctions Law in all respects related to the performance of this Contract and shall not have any dealings or transactions with any Sanctioned Person if such dealings or transactions would cause Essence Group to be in violation, or to be subject to a risk of punitive measures being imposed pursuant to, any Economic Sanctions Law.
- 34.2 For the purposes of this Agreement:
- “Sanctioned Person”** means any person, organisation or vessel
- 34.2.1 designated on the United Nations Consolidated Lists, the Consolidated List of Financial Sanctions Targets maintained by the UK HM Treasury, the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, the US Government's Denied Persons List, Entities List, Debarred Parties List and Terrorism Exclusion List or an any list of targeted persons issued under the Economic Sanctions Law of any other country (including the European Union);
- 34.2.2 that is, or is part of, a government of a Sanctioned Territory;
- 34.2.3 owned or controlled, directly or indirectly, by, or acting on behalf of, any of the foregoing;
- 34.2.4 incorporated within, located within or operating from a Sanctioned Territory and subject to any Economic Sanctions Law; or
- 34.2.5 otherwise targeted under any Economic Sanctions Law.
- “Economic Sanctions Law”** means any laws, regulations, or other binding measures of the European Union, any EU member state, the United Nations, the United States of America or any other jurisdiction applicable to the Parties which relates to economic or trade sanctions, export controls, non-proliferation, anti-terrorism or similar restrictions.
- “Sanctioned Territory”** means any country or other territory subject to a general export, import, financial or investment embargo under Economic Sanctions Law from time to time, including without limitation Iran, Myanmar, Sudan, Syria, North Korea and Russia/Ukraine.
- 35. VENDOR COMPLIANCE, INCLUDING MODERN SLAVERY**
- 35.1 Vendor will at its own cost, obtain and keep in force any authorisations, licences, approvals, import permits, registrations and other documents necessary to fulfil its obligations under this Agreement.
- 35.2 Vendor will determine whether or not an export license is required for supply and delivery of any products to Essence Group and it is a condition precedent to dealing with Essence Group. Vendor is deemed to have confirmed that it has the necessary authorisations, permits and licences to trade and supply goods to Essence Group, unless the Vendor has prior to acceptance of each Purchase Order from Essence Group notified the latter to the contrary, in which case Essence group has the discretion to cancel the Purchase Order or exercise its rights under clause 23 hereto.
- 35.3 Vendor will, at its own costs, comply with, and promptly inform Essence Group of any changes, or prospective changes to Laws applicable to the manufacture, sale, packaging, labelling and marketing of the products under this Agreement, including but not limited to anti-bribery and corruption, modern slavery and forced labour and environmental compliance
- 35.4 Vendor will take reasonable steps to identify, assess and address risks associated with modern slavery and forced labour, anti-money laundering, anti-bribery and corruption in the operations and supply chains used in the manufacture of the Products. If, at any time, Vendor becomes aware of any practices that go against modern slavery, anti-bribery and corruption and any environmental compliances in the operations and supply chain used in the performance of this Agreement, Vendor must, as soon as reasonably practicable:
- 35.4.1 promptly notify Essence Group of such practices and provide any relevant information requested by Essence Group;
- 35.4.2 take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains;
- 35.4.3 take all reasonable steps (including any corrective action plans) to address failure of compliance and remediate any adverse impacts caused or contributed to by Vendor, or anyone the Vendor engages within the supply chain to manufacture, package, sell and distribute the Product, or to mitigate the risk, damage or potential damage arising from these practices, including modern slavery practices in accordance with the United Nations' Guiding Principles on Business and Human Rights (https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf);
- 35.4.4 consult with Essence Group about its actions and steps under sub-clauses clauses 35.4.2 and 35.4.3 above; and
- 35.4.5 provide updates to Essence Group of its progress to address or remove these practices and remediate the adverse impacts on a regular basis and as otherwise requested by Essence Group.
Note: Nothing shall prevent Essence Group from exercising its right under clause 23 for a breach of this clause.
- 36. APPENDIX**
- Vendor agrees that it shall at all times comply in all respects with the provisions in **Appendix 1**

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APPENDIX 1

A. **INSURANCE REQUIREMENTS**

- (a) Vendor shall obtain and maintain, at Vendor's expense, a policy or policies of public and product liability insurance in respect of the Goods, with an endorsement naming Essence Group as an interested party, in such amounts, with such companies and containing such provisions as Essence Group may reasonably require from time to time, provided that the minimum amount of cover shall be:
- AUD 20 million (or equivalent in other currencies) for any one occurrence for commercial general and public liability;
 - AUD 20 million (or equivalent in other currencies) for any one occurrence, and in the aggregate, for product liability; and
 - AUD 10 million for professional services errors and omissions liability insurance covering sums that the Vendor becomes legally obliged to pay as damages resulting from claims made by Essence Group for errors and omissions committed under these terms and conditions.
- All exceptions to these limits must be authorised by Essence Group.
- (b) All such policies shall provide that the coverage thereunder shall not be terminated without at least 30 days' prior written notice to Essence Group and Vendor shall provide Essence Group with current certificates of such insurance.
- (c) In this regard, either of the two documents listed below are acceptable: (i) A copy of the policy certificate showing the relevant section on public and product liability; or (ii) a letter headed document from an insurance broker.
- (d) Either document must include the following information: (i) name of Insured and Insurer; (ii) Policy Number; (iii) Date of commencement and expiry of Policy; (iv) Policy limit of insurance cover; and (v) confirmation that coverage must not be terminated without 30 days prior written notice to Essence Group.
- (e) Vendor is required to provide the above information each time insurance cover is renewed and failure to provide this could result in suspension of trading activities.

B. **SOCIAL RESPONSIBILITY COMPLIANCE**

Vendor agrees to the following:

- (a) Vendor agrees to comply with the following Essence Group policies: Supplier Code of Conduct and any other Company Code of Business Conduct and Ethics a copy of which are found at the following link: <https://essencegp.com.au/wp-content/uploads/2021/06/Essence-Group-Supplier-Code-of-Conduct.pdf> (collectively and individually, **Essence Group Codes of Conduct**) and may be updated and amended from time to time by Essence Group and notified to Vendor.
- (b) Without limiting the terms of this Agreement, Vendor represents and warrants to Essence Group that Vendor and its subcontractors and suppliers:
- will comply with all applicable labour and environmental laws and regulations of the country in which Goods are produced; and
 - do not use any form of compulsory prison labour or slave labour, or illegal child labour nor physically abuse their workers.
- (c) Vendor shall provide to Essence Group the names, addresses and contact details of its suppliers and subcontractors.
- (d) Vendor shall provide to Essence Group all existing and any future, social audit reports and
- co-operate and work with Essence Group on the identification and rectification of any non-conforming issues identified in any such audits and implement corrective action specified by Essence Group to rectify the same; and
 - attend all training sessions conducted by Essence Group when reasonable; and
 - hereby permits Essence Group to share such audit reports and corrective action plans with any of Essence Group's trading partners.
- (e) Essence Group and its representatives and agents may inspect the facilities of Vendor and its subcontractors and interview their respective employees from time to time to audit compliance with this Agreement, the Supplier Code of Conduct and any additional customer and licensor codes, policies and procedures applicable to Vendor.

- Vendor and its subcontractors shall, in respect of all factories that manufacture Goods and components thereof:
- grant all such representatives and agents of Essence Group access to their facilities, records and employees to conduct the audits; and cooperate with all reasonable requests of the representatives and agents in the performance of the audits; and
- Vendor shall procure that its subcontractors comply with paragraphs B and C of this Appendix 1, and the remaining terms of this Agreement, to ensure compliance by Vendor with the same.
- Notwithstanding any other provision in this Agreement, upon review, audit or discovery by Essence Group of any violation of the provisions of this Agreement, Essence Group, in its sole discretion, reserves the right to terminate with immediate effect this Agreement and cancel any Purchase Order, return or revoke acceptance of affected Goods and/or require corrective action to be taken at Vendor's expense.

C. **PAPER AND WOOD COMPLIANCE**

Vendor agrees that, in respect of wood or wood fibre used in the manufacture of any Goods, Vendor shall:

- use its best efforts to ensure that: (A) such wood and fibre has been harvested in compliance with laws in force in the area of harvesting; and (B) Goods are manufactured from legally harvested and properly obtained wood or fibre in compliance with this Agreement;
- avoid the use of wood or fibre from rainforests or "old growth" wood or fibre or from forests of exceptional conservation value;
- upon request, certify in writing to Essence Group: (A) the usage, species, origin and sourcing of all paper and wood-based Goods and provide supporting certificates, registrations and licences; and (B) provide such records as Essence Group determines necessary or desirable to verify the species and source of wood or fibre and to substantiate any claims of recycled material, the Goods recyclability and similar environmental claims;
- ensure that where (A) Forest Stewardship Council (FSC) or (B) Programme for the Endorsement of Forest Certification (PEFC), Chain of Custody is used, that certification is maintained, and any related agreements are completed, and any identified non-conformities relating to the Chain of Custody system or Goods are reported to Essence Group; and
- advise Essence Group immediately on any changes in certifications, registrations, harvesting species, origin, harvesting locations and laws; and
- permit Essence Group's representatives to inspect Vendors books and records from time to time to audit compliance with this clause.

D. **SHIPPING DOCUMENTS**

- (a) A Free Trade Agreement (FTA) exists with: China, Hong Kong, Malaysia, Vietnam, New Zealand, Philippines, Thailand, Korea, Japan, Singapore, Peru and all such countries as may be notified by the Australian Department of Foreign Affairs & Trade (DFAT) from time to time.
- (b) Vendor shall contact the designated freight forwarder and send all shipping documents prior to the shipment cut-off date to Essence Group and the designated freight forwarder.
- (c) Vendor will do all things necessary to ensure that:
- All Shipping Documents (as defined below) are delivered in a timely manner and:
 - are sent to Essence Group and the designated freight forwarder **no later than 3 calendar days after** vessel has departed, time being of the essence; and
 - FTA documents are provided **no later than 5 calendar days after** vessel has departed, time being of the essence.
 - Shipping Documents** means all of the following:
 - Vendor invoice; Shipping advice; Packing list; Packing declaration; Certificate of Origin; Bill of lading; Certificate of Analysis, Material Safety Data Sheets, Manufacturer Declaration;
 - Inspection Report that assesses the quality of the production of Goods;
 - any other related document; and

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ii.iv As Taiwan has no FTA, the above documents including Sea way bill must be provided in respect of Taiwan.

E. ENVIRONMENTAL RESPONSIBILITIES

Vendor promotes the protection of the environment and the conservation of natural resources. As a minimum, Vendor complies with all applicable laws and regulations relating to the environmental impacts of Vendor's business, and Vendor shall maintain procedures for notifying local authorities in the event of an environment accident resulting from Vendor's operations. Compliance with environmental law includes any international or applicable local laws affecting the source of materials and processes used to manufacture products. The detailed performance standards address at least the following:

- (a) **Waste Management:** Waste is minimised, and items recycled whenever this is practicable. Effective controls of waste in respect of ground, air, and water pollution are adopted. In the case of hazardous materials, emergency response plans have been put in place.
- (b) **Conservation:** Processes and activities are monitored and modified as necessary to ensure conservation of scarce resources, including water, flora and fauna.
- (c) **Energy Use:** All production and delivery processes, including the use of heating, ventilation, lighting, IT systems and transportation, must be based on the need to maximise efficient energy use and to minimise harmful emissions.

F. AUDIT COSTS

Without limiting the terms of Paragraphs B and C above, Vendor agrees that:

- (a) if Essence Group deems that an external audit is required in order to review compliance with this Agreement and/or any Essence Group Codes of Conduct, the costs of the audit shall be paid by Vendor to meet Essence Group's customers corporate social responsibility requirements. However, if Vendor is in breach of this Agreement or any Essence Group Codes of Conduct then Vendor is liable for the full cost of the audit and shall pay such sum immediately to Essence Group on demand.
- (b) if Essence Group is not satisfied with an existing audit obtained by Vendor, then Essence Group shall procure and pay for an initial audit of Vendor only but Vendor will pay on request from Essence Group, for all subsequent audits, which must be undertaken if any deficiencies are identified in such initial audit or any subsequent audits.
- (c) Monitoring and compliance costs associated with any third-party audits in relation to the Supplier Code of Conduct must be paid for by Vendor on demand from Essence Group.
- (d) For the purpose of any audits related to anti-bribery laws, anti-corruption laws, modern slavery laws or its equivalent, labour laws, chain of responsibility, supply chain and Essence Group's Vendor Code of Conduct, the Vendor will maintain adequate books, records, documents, papers and other material ('relevant records') and will also maintain a system of internal controls to prevent the payment of bribes, provide reasonable assurance that financial statements and reporting are accurate and will take all necessary steps to address risks of modern slavery practices in the Supply Chain (including, without limitation, due diligence and remediation processes). The Vendor will not have undisclosed or unrecorded accounts for any purpose and false, misleading, incomplete, inaccurate or artificial entries in the books and records are prohibited. The Relevant Records will be made available to Essence Group or an independent certified public accountant or consultant nominated by Essence Group. Essence Group may exercise its rights under this provision at any time if it believes that the Vendor or any of its representatives have violated or may potentially violate any anti-bribery laws, anti-corruption laws, Modern Slavery Laws, Chain of Responsibility, Labour Laws or Essence Group's Supplier Code of Conduct.