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## TERMS AND CONDITIONS OF PURCHASE

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### 1. INTERPRETATION

1.1. In these conditions:

<b>Company</b>	<b>Dawnthrive Limited</b> (Company Registration Number: 2026081), a Company incorporated in England, whose registered office is at 4 Winchester Road, Crampmoor, Romsey, Hampshire, U.K. SO51 9AL.
<b>Conditions</b>	Standard conditions of purchase set out in this document and includes any Special Conditions annexed hereto;
<b>Contract Goods</b>	The contract for the purchase and sale of the Goods; All or any products or services (including any instalment of the goods or any part of them), which the Supplier is to supply in accordance with these Conditions;
<b>Supplier</b>	means the person, firm or organisation who accepted the order for the Goods from the Company;
<b>Purchase Order</b>	Any order in Writing issued to the Supplier having these general Conditions of purchase on its reverse side or having reference to the Conditions on its face.
<b>Order Amendment</b>	An authorised order amendment or series of order amendments to the Purchase Order with each order amendment having precedence over any earlier order amendment or the Purchase Order issued in Writing;
<b>Writing</b>	Facsimile transmission, e-mail, electronic data interchange, Web site and other comparable means of communication.

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. Words denoting the singular number only, include the plural and vice versa.
- 1.4. The headings used in these Conditions are for convenience only and shall not affect the construction thereof.

### 2. BASIS OF PURCHASE

- 2.1. The Supplier sells and the Company purchases the Goods as specified in the Company's official order as confirmed in Writing which is accepted by the Supplier or any written order of the Company which is accepted by the Supplier subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions which the Supplier applies or purports to apply to the Contract.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Supplier and a director of the Company.

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- 2.3. The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract, the Supplier acknowledges that it does not rely on any representations that are not so confirmed.

### 3. THE CONTRACT

- 3.1. In order of precedence the Contract shall comprise, any order amendments in reverse date order, the Purchase Order, the Conditions of Purchase as set out herein and any other document or documents either in whole or in part as referenced on the Purchase Order.
- 3.2. Unless agreed in Writing by the Company prior to the Purchase Order being issued to the Supplier, the Contract shall not include any of the Supplier's conditions of sale, notwithstanding reference to such conditions in any document.
- 3.3. Acceptance of the purchase order and any subsequent order amendments by the Supplier will be taken to imply the Supplier's acceptance of the Company's Conditions of Purchase as stated herein.
- 3.4. These Conditions shall apply to any order relating to the design, manufacture and/or supply of any Goods or Services to the Company and to any Contract arising there from.

### 4. PRICE AND PAYMENT

- 4.1. The price stated in the Contract shall be firm and fixed for the duration of the Contract and shall exclude Value Added Tax (VAT) where applicable to the Goods.
- 4.2. Unless agreed and confirmed in Writing by the Company prior to the issue of the Purchase Order to the Supplier the Company will pay the Supplier by the 30<sup>th</sup> day of the month following receipt of a correctly rendered invoice. The Supplier's invoice must state the Company's Purchase Order number and specify the currency of payment. The Company will not accept any responsibility for delays in payment resulting from the Supplier's failure to comply with these invoicing instructions.
- 4.3. Any claim for payment must be submitted with full documentary evidence and clear explanation by the Supplier to the Company within 60 days of termination. The Company will not pay any claims submitted after the expiry of the 60 day period.
- 4.4. The Supplier shall be solely responsible for all costs incurred in connection with the fulfilment of the Contract unless otherwise specifically agreed in Writing by the Company prior to the issue of the Purchase Order.

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### 5. ORDER AMENDMENT

- 5.1. The Company shall be entitled, prior to the Goods being despatched from the Supplier to issue an Order Amendment which may add to, delete or modify the Goods. If the Order Amendment will result in a change to the current price or delivery date of the Purchase Order the Supplier must suspend all work on the Contract and notify the Company immediately of any impact on price or delivery date. In calculating a revised price the Supplier shall use the same cost base and profitability as for the original price.
- 5.2. The Company shall respond to the Supplier within 5 working days of receiving the revised price and/or delivery date. The Order Amendment shall take effect only on acceptance of the Supplier's quotation for a revised price and/or delivery date in Writing by the Company. In the event that the Company does not accept the Supplier's revised price and/or delivery date within the validity period of the quotation, the performance of the Contract shall immediately revert to the status prior to the Company issuing the Order Amendment. The Supplier is entitled to slip the delivery date by the number of working days that the Contract was held in suspension.

### 6. TERMINATION OF ORDER

- 6.1. The Company shall be entitled to cancel a Purchase Order, either in full or in part, due to circumstances beyond the control of the Company. In such cases, the Supplier will be entitled to claim from the Company all reasonable costs incurred for work and procurement of materials to the date that the Purchase Order was terminated.
- 6.2. The Purchase Order shall terminate under the following conditions:
- 6.2.1. Immediately where the Supplier becomes bankrupt, insolvent or the subject of a winding up order;
  - 6.2.2. The Supplier acts in breach of this agreement and fails to provide a satisfactory remedy within 14 days of a written request to the Company, which has thereafter been agreed in Writing by the Company.

### 7. DELIVERY

- 7.1. The delivery date stated in the Purchase Order shall be the essence of the Contract. The Supplier shall inform the Company immediately in the event that the Goods will not be delivered by the date or dates stated in the Purchase Order.
- 7.2. If the Supplier fails to deliver the Goods on or before the date or dates specified in the Purchase Order, the Company may by giving notice to the Supplier in Writing cancel any undelivered balance of the Goods.

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The Company may return any Goods for full credit delivered prior to cancellation which in the Company's view could not be used as a result of the cancellation of the Purchase Order.

### 8. PACKING AND PACKAGING

- 8.1. The Supplier shall pack the Goods in packaging compliant with the standard specified in the Purchase Order. Where no particular packaging has been specified, the Supplier shall use packaging of such a standard to ensure that the Goods will arrive intact without damage at the delivery point stated in the Purchase Order. Such packing and packaging will be included in the value of the Purchase Order.
- 8.2. Unless agreed in Writing by the Company all packaging shall be non-returnable.
- 8.3. The Supplier shall be responsible for any damage to the Goods found at the time of delivery or during the Company's Goods Inwards Inspection procedure. The Company shall notify the Supplier within 2 working days following delivery of the damage found. Following such notification the Supplier shall advise the Company the remedy or remedies the Supplier will implement to replace the damaged Goods.

### 9. ACCEPTANCE

- 9.1. The Company shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within 5 working days of delivery if they do not conform fully with the requirements of the Purchase Order. The Company shall give the Supplier a reasonable opportunity to collect and replace the defective or non-conforming Goods with Goods that conform fully with the Purchase Order. If the Supplier does not provide the required replacements within the agreed period the Company reserves the right to cancel the Purchase Order and seek alternatives from other sources.
- 9.2. The cost for replacing the defective or non-conforming Goods including transportation shall be the responsibility of the Supplier. Where the goods have not been collected by the Supplier after a reasonable period the Company shall return the Goods to the Supplier at the Supplier's risk and expense.

### 10. HEALTH AND SAFETY

- 10.1. The Supplier shall observe all legal requirements of the United Kingdom, European Union and other relevant international agreements in relation to health, safety and the environment.
- 10.2. The Supplier shall correctly pack and mark all hazardous goods in accordance with the appropriate UK governmental and international regulations. The Company will reject any hazardous or dangerous goods

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that are attempted to be delivered to the stated delivery point, which are in any in contravention or do not comply with the latest UK Carriage of Dangerous Goods Act.

- 10.3. The Supplier shall be solely responsible for and shall indemnify and keep indemnified the Company against any loss, liability or expense arising directly or indirectly from the use of the Goods in accordance with the uses to which a competent engineer would put goods of that description and specification.

### 11. WARRANTY

- 11.1. Unless specifically agreed in Writing the Supplier shall make good at their own expense any defect in the Goods within a period of 18 months from the date on which the Goods were accepted by the Company or 12 months from the date of first use, whichever occurs first. Defects include but are not limited to poor workmanship, faulty or inadequate materials or latent design defects. The Supplier will extend the warranty of any repaired or replaced items by a further 12 months from the date that such repairs or replacements were accepted by the Company.
- 11.2. In cases where the Supplier has designed the Goods specifically to meet the requirements of the Company's Purchase Order, the Supplier shall ensure that equivalent or alternative compliant spares will be available to facilitate repair of the Goods for a period of at least 10 years from the acceptance date of the Goods.

### 12. PASSING OF PROPERTY AND RISK

- 12.1. The property in the Goods to be supplied by the Supplier shall pass to the Company on the delivery of the Goods to the Company or when the Company pays for the Goods whichever shall first occur.
- 12.2. The passing to the Company of the property in the Goods shall be without prejudice to any right of rejection or other rights of the Company whether contained in these Conditions or implied by law.

### 13. FORCE MAJEURE

- 13.1. Neither the Company nor the Supplier shall be liable for breach of the Contract other than payment if and to the extent that fulfilment of a term or condition hereof has been prevented, hindered or delayed by "Force Majeure" as define in this condition and in such event the time for fulfilment of such a term shall be extended for such a period as is reasonable in all the circumstances. In such conditions, the Company may suspend the Contract and after a reasonable period cancel the Purchase Order without incurring any liability to the Supplier.

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- 13.2. The expression "Force Majeure" shall mean any event of circumstances beyond the immediate control of either the Supplier or the Company including but without limitation strikes, lockouts, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to natural forces, fire, flood, explosion and compliance with orders or requests of any national or local authority.

### 14. ITEMS AND MATERIALS SUPPLIED BY THE COMPANY

- 14.1. The Supplier shall be responsible for any property of the Company supplied in connection with this Order and the Supplier shall indemnify the Company against any loss or damage to such property howsoever arising. Such property shall on completion of the Purchase Order or as otherwise directed by the Company be returned to the Company promptly in good condition. The Supplier shall not use such property nor shall it authorise or knowingly permit it to be used by anyone else for or in connection with any purpose other than the supply of goods or services to the Company.
- 14.2. All intellectual property, drawings, dies, patterns, tools, moulds, models, materials or other items made or produced by the Supplier for the purpose of the contract shall be and remain the property of the Company.

### 15. CONFIDENTIALITY

- 15.1. The Supplier shall not, without the Company's prior consent in Writing, disclose the existence of the Purchase Order to any other party, whether through publicity releases, advertisements or otherwise.
- 15.2. The Supplier shall keep secret and confidential any information (whether oral or in Writing), drawings, artwork, computer files and technical documentation furnished by or on behalf of the Company in respect of the Purchase Order or which become known to the Supplier through its performance of the Contract and such information, drawings, artwork and documentation shall be used by the Supplier only in the execution of the Purchase Order.

### 16. CORRUPT GIFTS

- 16.1. The Supplier shall not give, provide or offer to any employee of the Company or its agents any gift, reward, fee, loan, benefit in kind or any emolument or advantage whatsoever in connection with the Purchase Order or any other contract that exists between the Company and the Supplier. In the event of the Supplier being in breach of this condition the Company shall be entitled to terminate the Purchase Order immediately without prejudice to any other rights the Company may have and recover from the Supplier any costs through loss or damage the Company may suffer as a result of such termination.

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### 17. WORK ON COMPANY PREMISES

- 17.1. Where the Supplier performs any work or services in fulfilment of the Contract on Company premises the following condition shall apply. Every employee and/or sub-contractor or any other associated person engaged by the Supplier will adhere in all respects to the requirements imposed on the Supplier by current safety legislation and to any regulations notified to the Supplier in Writing by the Company.

### 18. GENERAL

- 18.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 18.2. No waiver by the Company of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other condition.
- 18.3. If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other Conditions and the remainder of the condition in question shall not be affected and the parties thereto shall negotiate the terms of the Condition so invalidated with a view to agreeing a revised and valid Condition.
- 18.4. It is not intended that any third parties should be entitled to enforce the terms of this agreement (unless otherwise expressly so provided) purely by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 18.5. The Contract shall be governed by the laws of England, and in accepting the Purchase Order the Supplier agrees to submit to the exclusive jurisdiction of the English courts.



**19-May-05**

Signature

Date

Name: **Bret Coombs**

Position: **Director of Operations**

Company stamp/seal:

