



**CONTRACT**  
CANDLES & DIFFUSERS

**CONTRACT CANDLES & DIFFUSERS LTD**  
**TERMS AND CONDITIONS OF BUSINESS**

This agreement consists inclusively of Sections A to D (as applicable) (**Agreement**) below made between:

1. you, the organisation placing an order (**you, Customer**); and
2. Contract Candles & Diffusers Ltd (company registration number: 05075959) at registered office: Lower Lodge, Vann Road, Fernhurst, Haslemere, Surrey, GU27 3NH (**Contract Candles & Diffusers, we, our, us**).

each a '**party**', together the '**parties**'

- A. We design, develop, manufacture and package candles and reed diffuser products, to meet Customer specifications.
- B. We have agreed to provide and the Customer has agreed to pay for the Products and/or Services (as defined below), subject to this Agreement.
- C. Where we provide testing services, our special conditions apply (as set out in Section D), in addition to Section C.

**SECTION A: CUSTOMER DETAILS**

<b>Company name:</b>	
<b>Registration number:</b>	
<b>Contact name:</b>	
<b>Contact telephone number:</b>	
<b>Email address for notices:</b>	
<b>Postal address for notices:</b>	

All transactions with us are governed by this Agreement unless specifically stated otherwise. We may change this Agreement at any time and will communicate these changes to you in writing.

**SECTION B: SIGNATURE**

By signing below, the Customer unequivocally agrees to Section A, B, C and D (as applicable) of this Agreement:

<b>Authorised signature:</b>	
<b>Print name:</b>	
<b>Date:</b>	



# CONTRACT

CANDLES & DIFFUSERS

## SECTION C: TERMS

### 1. Interpretation

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

#### 1.1 Definitions:

<b>AQLI</b>	Acceptable Quality Level Inspection;
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>Commencement Date</b>	the date on which we issue written acceptance of the Order (defined below) at which point, this Agreement comes into existence;
<b>Contract Candles Materials</b>	means materials, equipment, documents and any other property of Contract Candles;
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
<b>Customer Default</b>	any act or omission by the Customer or failure by the Customer to perform any relevant obligation;
<b>Data Protection Legislation</b>	all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK);
<b>Deliverables</b>	the deliverables set out in the Order produced by Contract Candles for the Customer;
<b>Force Majeure Event</b>	means events, circumstances or causes beyond Contract Candles' reasonable control;
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, sketches, origination work, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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;
<b>Location</b>	the location set out in the Order or such other location as the parties may agree in writing;
<b>Order</b>	the Customer's completed sales order form for the supply of Products and/or Services;
<b>Products</b>	means all material furnished by Contract Candles whether candles, reed diffuser products, fragrance, glass, packaging, development samples, design samples, designs, photographs



# CONTRACT

## CANDLES & DIFFUSERS

<b>Products Specification</b>	or any other physical or electronic material (or any part of them, whether physical or electronic) as set out in the Order; any specification for the Products, including any relevant drawings, designs and/or fragrance, that is agreed in writing by both parties;
<b>Services</b>	the services, including the Deliverables, supplied or performed by Contract Candles to the Customer as set out in the Service Specification;
<b>Service Specification</b>	the description or specification for the Services provided in writing by Contract Candles to the Customer;
<b>Test Report</b>	the technical test report prepared by Contract Candles for the Customer;
<b>VAT</b>	value added tax chargeable from time to time.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 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.
- 1.5 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.
- 1.6 A reference to **writing** or **written** includes email but not fax.

### 2. **Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with this Agreement.
- 2.2 The Order shall only be deemed to be accepted on the Commencement Date.
- 2.3 Once an Order has been placed, it cannot be cancelled, unless agreed by both parties in writing.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Contract Candles and any descriptions of the Products or illustrations or descriptions of the Services contained in Contract Candles' literature are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of this Agreement or have any contractual force.
- 2.5 This Agreement applies to the exclusion of any other terms or agreements that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Contract Candles shall not constitute an offer and is only valid for a period of 30 (thirty) calendar days from its date of issue.
- 2.7 This Agreement shall apply to the supply of both Products and Services, where applicable, except where application to one or the other is specified.
- 2.8 Multiple Orders may be in place between the Customer and Contract Candles at any time, each of which are subject to this Agreement.
- 2.9 Where there is a conflict, the order of precedence shall be as follows:
- 2.9.1 the Order;
  - 2.9.2 the Products Specification or Services Specification;
  - 2.9.3 Section D (if testing services are required);
  - 2.9.4 Sections A to C of this Agreement.

### 3. **Products**

- 3.1 The Products are described in any literature provided by us, the applicable Products Specification or are available to view in our showroom (as applicable).



# CONTRACT

## CANDLES & DIFFUSERS

- 3.2 Products will be manufactured in accordance with the applicable Products Specification, however, in relation to containers (glass, ceramics, metal or otherwise) a tolerance not exceeding one eighth of an inch or 3mm shall be allowed in any dimension.
- 3.3 To the extent that the Products are to be manufactured in accordance with a Product Specification supplied by the Customer, the Customer shall indemnify Contract Candles against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Contract Candles arising out of or in connection with any claim made against Contract Candles for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our use of the Products Specification. This clause 3.2 shall survive termination of this Agreement.
- 3.4 We reserve the right to amend the Products Specification if required by any applicable statutory or regulatory requirement, and we shall notify the Customer in any such event.
- 3.5 If a Customer requests samples of Products for press, photography or similar are to be requested in advance of performance of the Services or manufacture of the Products, at an agreed fee.
- 3.6 Where Contract Candles issues a sample of a Product bespoke to the Customer, prior to manufacture, Contract Candles shall not commence such manufacture until the Customer has communicated its approval of the samples to Contract Candles in writing (such approval not to be unreasonably withheld or delayed). The Customer's approval of the samples constitutes irrevocable confirmation that:
- 3.6.1 the Products will be manufactured in conformity with the samples (or differing only within normal industry tolerances) and comply with the Product Specification; and
- 3.6.2 the Products meet the relevant industry standards, as applicable, and requirements of quality, except for defects which are not capable of being revealed on reasonable inspection by the Customer.
- 4. Delivery or Collection of Products**
- 4.1 Contract Candles shall ensure that:
- 4.1.1 each delivery (or collection) of the Products is accompanied by a note which shows the date of the Order, all relevant Customer and/or Contract Candles reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
- 4.1.2 it states clearly on the note any requirement for the Customer to return any packaging material to Contract Candles. The Customer shall make any such packaging materials available for collection at such times as Contract Candles shall reasonably request. Returns of packaging materials shall be at Contract Candles' expense.
- 4.2 Contract Candles shall deliver the Products or the Customer shall collect from the Location at any time after Contract Candles notifies the Customer that the Products are ready.
- 4.3 If the Customer is arranging its own collection of the Products, the Customer (or its nominated representative) shall collect the Products from the Location within three Business Days of Contract Candles notifying the Customer that the Products are ready.
- 4.4 If Contract Candles is delivering the Products to the Customer, delivery of the Products shall be completed on the completion of unloading of the Products at the Location.
- 4.5 If the Customer is arranging its own collection of the Products, delivery is completed on the completion of loading of the Products at the Location.
- 4.6 Any dates quoted for delivery or collection of the Products are approximate only, and the time of delivery is not of the essence. Contract Candles shall not be liable for any delay in delivery or failure to deliver the Products that is caused by a Force Majeure Event or the Customer's



## CONTRACT CANDLES & DIFFUSERS

- failure to provide Contract Candles with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.7 If Contract Candles fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products.
- 4.8 If the Customer fails to accept delivery of the Products or collect the Products within three Business Days of Contract Candles notifying the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by Contract Candles' failure to comply with its obligations under this Agreement in respect of the Products:
- 4.8.1 delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Contract Candles notified the Customer that the Products were ready (applicable only if Contract Candles delivers the Products); and/or
- 4.8.2 Contract Candles shall store the Products until delivery or collection takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 If ten Business Days after Contract Candles notified the Customer that the Products were ready for delivery or collection the Customer has not accepted delivery of them or collected the Products, Contract Candles may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 4.10 If Contract Candles delivers up to and including 5% more or less than the quantity of Products ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Products was delivered, Contract Candles shall make a pro rata adjustment to the invoice for the Products.
- 4.11 Contract Candles may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **Quality of Products**
- 5.1 Contract Candles warrants that on delivery the Products shall:
- 5.1.1 conform with their description and any applicable Products Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, Contract Candles shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full if:
- 5.2.1 the Customer gives notice in writing within a reasonable time of discovery, and in any event within 7 (seven) days', that some or all of the Products do not comply with the warranty set out in clause 5.1;
- 5.2.2 Contract Candles is given a reasonable opportunity of examining such Products; and
- 5.2.3 the Customer (if asked to do so by Contract Candles) returns such Products to Contract Candles' place of business at Contract Candles' cost.
- 5.3 Contract Candles shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow Contract Candles' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- 5.3.3 the defect arises as a result of Contract Candles following any drawing, design or Products Specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Products without the written consent of Contract Candles;



# CONTRACT

## CANDLES & DIFFUSERS

- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.6 the Products differ from the Products Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, Contract Candles shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5 This Agreement shall apply to any repaired or replacement Products supplied by Contract Candles.
- 6. Title and Risk**
- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2 Title to the Products shall not pass to the Customer until:
- 6.2.1 Contract Candles receives payment in full (in cash or cleared funds) for the Products and any other products that Contract Candles have supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- 6.3.1 store the Products separately from all other products held by the Customer so that they remain readily identifiable as Contract Candles' property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 6.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Contract Candles' behalf from the date of delivery;
- 6.3.4 notify Contract Candles immediately if it becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4; and
- 6.3.5 give Contract Candles such information relating to the Products as Contract Candles may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Contract Candles receives payment for the Products. However, if the Customer resells the Products before that time:
- 6.4.1 it does so as principal and not as Contract Candles' agent; and
- 6.4.2 title to the Products shall pass from Contract Candles to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4, then, without limiting any other right or remedy Contract Candles may have:
- 6.5.1 the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 Contract Candles may at any time:
- 6.5.2.1 require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 7. Supply of Services**
- 7.1 Contract Candles shall supply the Services to the Customer in accordance with the Service Specification in all material respects.





# CONTRACT

## CANDLES & DIFFUSERS

- 7.2 Contract Candles shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or Service 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 Contract Candles reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Contract Candles shall notify the Customer in any such event.
- 7.4 Contract Candles warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 Contract Candles will act as the prime contractor for the Services, however may sub-contract any and all aspects of the Services, if required, however will remain the primary contract with the Customer.
- 7.6 A non-refundable charge of £1,000 per product variant applies to all development for new Customers, or at Contract Candles' discretion and is payable prior to commencement of the Services. This covers liaison with fragrance houses, all burn trials undertaken in the development of the product, diffusion tests on the Product, samples sent to a UK address, and use of our design team to design packaging, glass decoration and labelling. Samples sent to overseas addresses will incur additional courier charges or must be sent using a Customer's chosen courier service at their cost. Artwork and packaging samples will be charged at cost from the manufacturer.
- 8. Customer's Obligations**
- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and/or the Products Specification (as applicable) are complete and accurate;
- 8.1.2 co-operate with Contract Candles in all matters relating to performance of the Services and/or manufacture of the Products;
- 8.1.3 provide Contract Candles, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Contract Candles to provide the Services;
- 8.1.4 provide Contract Candles with such information and materials as Contract Candles may reasonably require in order to supply the Services or provide the Products, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for performance of the Services or manufacture of the Products before the date on which the Services are to start or the date on which manufacturing commences;
- 8.1.6 comply with all applicable laws, including health and safety laws;
- 8.1.7 keep all Contract Candles Materials at the Customer's premises in safe custody at its own risk, maintain Contract Candles Materials in good condition until returned to Contract Candles, and not dispose of or use Contract Candles Materials other than in accordance with Contract Candles' written instructions or authorisation; and
- 8.1.8 comply with any additional obligations as set out in the Service Specification and/or the Products Specification.
- 8.2 If Contract Candles' performance of any of its obligations under this Agreement is prevented or delayed by any Customer Default:
- 8.2.1 without limiting or affecting any other right or remedy available to it, Contract Candles shall have the right to suspend performance of the Services or manufacture of the Products 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 Contract Candles' performance of any of its obligations;



# CONTRACT

## CANDLES & DIFFUSERS

- 8.2.2 Contract Candles shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Contract Candles' failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse Contract Candles on written demand for any costs or losses sustained or incurred by Contract Candles arising directly or indirectly from the Customer Default.

### 9. Free Issued Components

- 9.1 Free issued components must be delivered to Contract Candles no later than 3 (three) weeks prior to the date the finished Products become available for delivery. Free issued components are to be supplied fully quality inspected and assured, ready for use and with an approved standard. However, Contract Candles will undertake an AQLI of free issued display boxes, labels and glass.
- 9.2 If the AQLI returns a reject rate of less than 5% (five percent), then we will pack off and deliver up to 5% (five percent) below the Order quantity.
- 9.3 If the AQLI gives a reject rate of greater than 5% (five percent), then the Customer will be given 3 (three) options:
  - 9.3.1 pay for a full quality inspection of the component at a rate of £50 per person per hour, to give the full extent of the reject rate. We will then pack off the available product stock and await the replacement component(s);
  - 9.3.2 pack off up to 100% of the component, marketing rejects separately to be charged at full price;
  - 9.3.3 the Customer arranges collection of the free issued component to carry out a full inspection, which will incur a line stoppage fee of £500 plus VAT;the above applies to a single component for a single Order.
- 9.4 Prices for the destruction of AQLI failed free issue components will be agreed based on the specific requirements and amount of Product to be destroyed.
- 9.5 All excess free issue components will be returned with the completed purchase order, with delivery costs charged accordingly unless otherwise agreed in writing.
- 9.6 Any property or materials supplied by the Customer will be held at the Customer's risk. Every care will be taken to ensure the best result where materials are supplied by the Customer but responsibility will not be accepted for imperfect work caused by defects or unsuitability of the material so supplied.

### 10. Charges and Payment

- 10.1 The price for Products:
  - 10.1.1 shall be the price set out in the Order; and
  - 10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be invoiced to the Customer.
- 10.2 The charges for Services shall be as set out in the Order or Services Specification.
- 10.3 Contract Candles reserves the right to:
  - 10.3.1 increase the charges for the Services;
  - 10.3.2 increase the price of the Products;by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products or Services to Contract Candles that is due to:
  - 10.3.3 any factor beyond the control of Contract Candles (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 10.3.4 any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Product Specification; or
  - 10.3.5 any delay caused by any instructions of the Customer in respect of the Products or Services or failure of the Customer to give Contract Candles adequate or accurate information or instructions in respect of the Products or Services.





## CONTRACT CANDLES & DIFFUSERS

- 10.4 In respect of Products, Contract Candles shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Contract Candles shall invoice the Customer on or at any time after completion of the Services.
- 10.5 The Customer shall pay each invoice submitted by Contract Candles:
- 10.5.1 within 30 (thirty) days of the date of the invoice, or, in accordance with any credit terms agreed by Contract Candles and confirmed in writing to the Customer; and
- 10.5.2 in full and in cleared funds to a bank account nominated in writing by Contract Candles.
- 10.6 The Customer acknowledges that time for payment shall be of the essence of this Agreement.
- 10.7 All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under this Agreement by Contract Candles to the Customer, the Customer shall, on receipt of a valid VAT invoice from Contract Candles, pay to Contract Candles such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 10.8 If the Customer fails to make a payment due to Contract Candles under this Agreement by the due date, then, without limiting Contract Candles' remedies under clause 15 (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 10.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10.9 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.10 Contract Candles reserves the right to perform any relevant financial or credit checks on the Customer, where required.
11. **Intellectual Property**
- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Products and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Contract Candles.
- 11.2 All Intellectual Property Rights in reports, sketches, drawings, graphs, photographs, charts or any other material produced by Contract Candles pursuant to this Agreement shall belong to Contract Candles.
- 11.3 Contract Candles retains any and all proprietary rights in inventions, ideas, improvements and concepts that may arise during the preparation or provision of a Test Report (including any Deliverables) and/or provision of Services or Products to the Customer.
- 11.4 In all cases the Customer shall be responsible for obtaining any clearances in respect of third party copyright works, trademarks, designs or other intellectual property. The Customer agrees to indemnify Contract Candles against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.
- 11.5 The Customer hereby grants to Contract Candles a non-exclusive, non-transferable, royalty-free licence (including the right to grant sub-licences to permitted subcontractors) to use the Customer's Intellectual Property Rights solely for the purpose of performing its obligations under this Agreement.
- 11.6 The Customer shall indemnify Contract Candles against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Contract Candles arising out of or in connection with any claim made against Contract Candles for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of the Customer Intellectual Property Rights, in accordance with this Agreement.



# CONTRACT

## CANDLES & DIFFUSERS

- 11.7 The Customer's liability under this indemnity is conditional on Contract Candles discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against Contract Candles that may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), Contract Candles shall:
- 11.7.1 as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
  - 11.7.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer;
  - 11.7.3 give the Customer and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of Contract Candles, to enable the Customer and its professional advisers to examine them and to take copies (at the Customer's expense) to assess the Claim; and
  - 11.7.4 be deemed to have given the Customer sole authority to avoid, dispute, compromise or defend the Claim.
- 11.8 Nothing in clause 11.7 shall restrict or limit Contract Candles general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
12. **Data Protection**
- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the parties are independent data controllers (as defined in the Data Protection Legislation), in respect of personal data they each process in their business.
13. **Confidentiality**
- 13.1 Each party undertakes that it shall not at any time 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:
- 13.2.1 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 this Agreement. 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
  - 13.2.2 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 this Agreement.
14. **Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 14.1 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- 14.1.1 death or personal injury caused by negligence;
  - 14.1.2 fraud or fraudulent misrepresentation; and
  - 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1, Contract Candles' total liability to the Customer shall not exceed the price paid for the Products or Services (as applicable) in the 12 (twelve) months prior to the Claim.



## CONTRACT

CANDLES & DIFFUSERS

Contract Candles' total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement.

- 14.3 Subject to clause 14.1, the following types of loss are wholly excluded by the parties.
- 14.3.1 loss of profits;
  - 14.3.2 loss of sales or business;
  - 14.3.3 loss of agreements or contracts;
  - 14.3.4 loss of anticipated savings;
  - 14.3.5 loss of use or corruption of software, data or information;
  - 14.3.6 loss of or damage to goodwill;
  - 14.3.7 indirect or consequential loss.
- 14.4 Contract Candles have given commitments as to compliance of the Products and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 14.5 This clause 14 shall survive termination of this Agreement.

### 15. Termination

- 15.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing to do so;
  - 15.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 15.1.3 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; or
  - 15.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.
- 15.2 Without affecting any other right or remedy available to it, Contract Candles may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 15.2.1 the Customer fails to pay any amount due under this Agreement on the due date for payment; or
  - 15.2.2 there is a change of control of the Customer.
- 15.3 Without affecting any other right or remedy available to it, Contract Candles may suspend the supply of Services or all further deliveries of Products under this Agreement or any other contract between the Customer and Contract Candles if the Customer fails to pay any amount due under this Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4, or Contract Candles reasonably believes that the Customer is about to become subject to any of them.

### 16. Consequences of Termination

- 16.1 On termination of this Agreement:
- 16.1.1 the Customer shall immediately pay to Contract Candles all of its outstanding unpaid invoices and interest and, in respect of Services and/or Products supplied but for which no invoice has been submitted, Contract Candles shall submit an invoice, which shall be payable by the Customer immediately on receipt;



## CONTRACT

CANDLES & DIFFUSERS

- 16.1.2 the Customer shall return all of Contract Candles Materials, Test Reports and any Deliverables or Products which have not been fully paid for. If the Customer fails to do so, then Contract Candles may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.
- 16.2 Termination of this Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
- 16.3 Any provision of this Agreement that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
17. **General**
- 17.1 **Force majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing or failure to perform, any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event.
- 17.2 **Assignment and other dealings**
- 17.2.1 Contract Candles 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 this Agreement.
- 17.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Contract Candles.
- 17.3 **Notices**
- 17.3.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 17.3.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 17.3.1.2 sent by email to the Customer to the email address specified in Section A, or to Contract Candles to: [accounts@contractcandles.com](mailto:accounts@contractcandles.com)
- 17.3.2 Any notice shall be deemed to have been received:
- 17.3.2.1 if delivered by hand, on signature of a delivery receipt; and
- 17.3.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and
- 17.3.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.3.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 17.3.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.4 **Severance.** If any provision or part-provision of this Agreement 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 this Agreement.
- 17.5 **Waiver.** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Agreement 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



## CONTRACT CANDLES & DIFFUSERS

- right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 **No partnership or agency.** Nothing in this Agreement 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.
- 17.7 **Entire agreement.**
- 17.7.1 This Agreement 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.
- 17.7.2 Each party acknowledges that in entering into this Agreement 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 this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.
- 17.8 **Third parties' rights.** Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 17.9 **Variation.** Except as set out in this Agreement, no variation shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.10 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 17.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

### SECTION D: SPECIAL CONDITIONS OF TESTING

1. This section only applies if you have requested Contract Candles to provide testing services.
2. Contract Candles will conduct, at the request of the Customer, the tests specified on the submitted Order in accordance with, and subject to, the Agreement and the following special conditions:
3. All Orders for tests are subject to acceptance by Contract Candles, and no Order will constitute a binding commitment of Contract Candles unless and until such Order is accepted by it, as evidenced by the Test Report. The Test Report is issued solely by Contract Candles, is intended for the exclusive use of the Customer and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of Contract Candles.
4. If the Customer anticipates using the Test Report in any legal proceedings, arbitration, dispute resolution forum or other proceedings, it shall so notify Contract Candles prior to submitting the Test Report. Contract Candles shall have no obligation to provide a fact or expert witness at such proceedings unless Contract Candles agrees in writing, in advance, to do so for an additional fee.
5. A result provided by Contract Candles in a Test Report refer only to the samples provided to Contract Candles. If a Test Report result is satisfactory, this does not imply that the product is approved by Contract Candles and no warranty is given as to the performance of the product



## CONTRACT CANDLES & DIFFUSERS

tested. The Test Report will reflect the findings of Contract Candles at the time of testing only, and Contract Candles shall have no obligation to update the Test Report after its issuance.

6. The Test Report will set forth the results of the tests performed by Contract Candles based upon the written information provided by the Customer in the Order. The Customer represents and warrants to Contract Candles that all test samples provided to Contract Candles shall be authentic. Contract Candles shall have no responsibility to conduct any investigation to confirm the authenticity of any test samples submitted to it. The Test Report will be based solely on the samples and written information submitted to Contract Candles by the Customer, and Contract Candles shall not be obligated to conduct any independent investigation or inquiry with respect thereto.
7. Contract Candles may, in its sole discretion, destroy samples which have been furnished to Contract Candles for testing and which have not been destroyed in the course of testing.