

Seller Terms

IMPORTANT:

This contract does not apply to customers.

If you are a customer (purchasing products through the OnBuy Marketplaces) please go to the [OnBuy Customer Terms](#).

PARTIES

These Seller Terms are between:

- (1) The Seller and
- (2) OnBuy Ltd (for all UK Sales)
- (3) OnBuy (EU) Ltd (for all EU Sales).

Collectively hereafter referred to as the "Parties."

OnBuy Ltd and OnBuy (EU) Ltd are referred to collectively hereafter as the OnBuy Companies which all trade under the name 'OnBuy'. Full information about the OnBuy Companies is set out at the end of this document.

1 INTERPRETATION

1.1 Unless the context otherwise requires, key terms are capitalised and defined in Schedule 1 (below).

1.2 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.

1.3 Wherever a singular expression is used in these Seller Terms, that expression is considered as including the plural or the body corporate where required by the context.

1.4 In these Seller Terms, the term "or" shall not be interpreted to be exclusive, and the term "and" shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires).

2 SELLER ACCEPTANCE

2.1 By completing the Seller application, paying the Application Fee and using the OnBuy Marketplaces from the Commencement Date, the Seller agrees to be bound by these Seller Terms.

3 COMMENCEMENT AND DURATION

3.1 This contract shall commence on the Commencement Date and shall have a term of one-month which shall automatically renew on a monthly rolling basis unless and until terminated in accordance with Clause 20 (Termination).

3.2 The contractual terms between OnBuy and the Seller that were applicable prior to the Commencement Date shall continue to apply to all sales made by the Seller prior to the Commencement Date.

4 OVERVIEW OF ROLES

4.1 The OnBuy Marketplaces are online platforms for the Seller and the Customers to complete transactions for the purchase of Products. The Seller determines which of the available OnBuy Marketplaces it wishes to be active on.

4.2 The OnBuy Companies are not party to contracts for the sales of Products made through the OnBuy Marketplaces. Any contract for the sale of Products concluded via the OnBuy Marketplaces is solely between the Seller and the Customer pursuant to the Customer Terms. None of the OnBuy Companies assume any responsibility whatsoever for breaches by either party to the Customer Terms.4.3 Notwithstanding 4.2, OnBuy Ltd and OnBuy (EU) Ltd (as applicable) have the Seller's authority to bind the Seller to contracts to the extent that they are created via the OnBuy Marketplaces.

4.4 OnBuy Ltd and OnBuy (EU) Ltd (as applicable) each act as a commercial agent on behalf of the Seller only and not on behalf of the Customer. OnBuy (EU) Ltd shall act as commercial agent on behalf of the Seller to complete transactions for all Orders made by Customers which are made by Customers in the EU. OnBuy Ltd shall act as commercial agent on behalf of the Seller to complete transactions made by Customers in the UK.

By entering into these Seller Terms, the Seller gives the relevant OnBuy Companies (as applicable based upon the Seller's selection) the right to conclude the sale of Products to Customers via the OnBuy Marketplaces on behalf of the Seller.

4.5 Customer payments for Orders shall be collected by OnBuy Ltd or OnBuy (EU) Ltd as applicable in the relevant currency for that country, or any other currency that OnBuy determines shall be applicable for purchases in the country of purchase. At their sole discretion, the relevant OnBuy Companies have the right to select the payment options made available to the Customer on the OnBuy.

4.6 In consideration for the Monthly Subscription Fees and other fees described in these Terms, OnBuy shall give the Seller access to the OnBuy Marketplaces. The relevant OnBuy Company shall:

4.6.1.1 Provide the OnBuy Marketplaces and operational means for the Seller to sell Products to Customers in various countries;

4.36.2 Provide a framework for the Seller to enter into contractual relations with Customers;

4.6.3 Provide the means for Sellers to communicate with Customers, including acknowledgement of the Order, and (separately) confirming dispatch of the Order;

4.6.4 Accept payments from the Customer on behalf of the Seller in settlement of the debt owed by the Customer to the Seller. Payments shall be processed by the relevant OnBuy Company and made available for the Seller to withdraw pursuant to these Seller Terms.

4.6.5 Provide the operational and technical means for Sellers to effect sales with Customers;

4.6.6 Provide the means for Sellers to manage cancellations and process refunds;

4.6.7 Process full or partial refunds on the Seller's behalf when the relevant OnBuy Company deems necessary (if the relevant OnBuy Company has already paid the Seller, the Seller shall refund such sums to the relevant OnBuy Company);

4.6.8 Provide a responsive Customer Care Team for and on behalf of the Seller to the Seller's Customers. This shall include assistance, negotiation and conclusion of Customer disputes for the Seller; and

4.6.9 From time to time, deliver marketing and promotional campaigns and offer incentives to Customers in order to increase Seller sales;

4.7 Act as commercial agent for the Seller pursuant to these Seller Terms and not act as agent for the Customer.

4.8 All contracts concluded by the Sellers with Customers through the OnBuy Marketplaces shall be completed pursuant to the [OnBuy Customer Terms](#), and the email confirmation of the Customer's Order. The Seller agrees to comply with Customer Terms.

4.9 The OnBuy Companies are not a party to the Customer Terms and OnBuy shall not be liable for, or in connection with, the Customer Terms or any claim or dispute arising out of or in connection with that agreement.

5 SELLER APPLICATION PROCESS

5.1 The Seller agrees to pay OnBuy Limited a non-refundable Application Fee in consideration of OnBuy processing the Seller's application to sell on the Marketplaces.

5.2 OnBuy Limited reserve the right to reject applications at its sole discretion but shall not reject applications unreasonably.

5.3 During the application stage, the applicant will be asked to select a country of business registration. This country must be featured among the list of supported countries set out and the Seller must be able to set up a business bank or business building society account in the chosen country.

5.4 If an applicant submits an application with false, erroneous or insufficient information, the Seller's application shall be rejected by OnBuy Ltd. Duplicate applications shall also be rejected. The Seller may only have one account with OnBuy.

5.5 OnBuy Ltd shall have complete discretion of the success of applications. No refund of the Application Fee shall be made.

5.6 Unless advised otherwise by OnBuy, the Seller may make subsequent applications, but each subsequent application will be subject to a non-refundable Application Fee.

6 SELLER'S USE OF THE ONBUY MARKETPLACES

6.1 Accessing and Completing the Seller Control Panel (SCP)

6.1.1 Once the Seller has successfully completed the application process OnBuy UK Ltd shall send a welcome email to the Seller and give the Seller full access to the SCP. The Seller shall be able to upload, update and review detailed Listing information for its Products. Orders will be logged into the SCP. The Seller will be able to use the SCP to manage Orders, view and manage disputes, view and print sales history, update and manage stock levels, view performance reports, manage its subscription and handle Customer feedback. All financial information will be stored in the SCP. All communication between the Seller and Customers will be made through the SCP.

6.1.2 The Seller shall ensure that the Seller's business name, company registration number and registered office (where applicable), as well as trading and returns address and applicable VAT numbers, are clearly displayed on the Seller's Shop and updated, as necessary, as soon as practicable.

6.2 Placing Products on the OnBuy Marketplaces

6.2.1 The Seller shall be able to create a Product Page and/or add a Listing or use an existing Product Page and add a Listing.

6.2.2 The Seller shall be able to select whether the Listing shall be applicable for sale in the UK or the EU (either or both).

6.2.3 If another seller is already using a Product Page and the Seller wishes to update the details on that Product Page, the Seller can submit a request to OnBuy. OnBuy reserves the right to accept or refuse to action such requests.

6.2.4 The Seller shall ensure that the correct age restrictions are entered into the Listing in the SCP for any applicable age-restricted Products.

6.2.5 The Seller shall not use the OnBuy Marketplaces as an advertising portal for selling items, other than the Products which the Seller is permitted to list for sales pursuant to these Seller Terms.

6.2.6 The Seller shall refrain from selling any [Prohibited Products](#) and shall pay the Operational Costs Recovery Fee to OnBuy if the Seller does list such Products. See Clause 15.4. When electing to make its Products available in specific countries, the Seller is solely responsible for ensuring that the Products may be lawfully sold in the relevant country. 6.2.7 The Seller shall refrain from creating Product Pages which infringe upon the Intellectual Property Rights or proprietary rights of any third party.

6.2.8 The Seller shall not create Product Pages or upload anything onto the OnBuy Marketplaces that contains obscene or discriminatory language, nude images, political messages or material or otherwise breaching the [OnBuy Website Terms of Use](#), as applicable at the time of such breach.

6.2.9 The Seller shall take sole responsibility for the accuracy and detail on all Product Pages it creates, including, but not limited to:

- a. Product descriptions;
- b. categorisation of Products;
- c. origin of Products;
- d. Listing Prices;
- e. images (the Seller shall ensure the photographic quality of the Products is high and have a white background colour where possible);
- f. measurements, the condition and any other supplementary information about the Products (including packaging, postage and delivery as well as the delivery price for each Listing);
- g. the total amount of stock of the Product that the Seller has available for Customers to purchase and the Seller's stock keeping unit of the Product, ensuring that this information is detailed in each Listing.

This responsibility in 6.2.8 applies irrespective of whether the Seller creates the Product Page or uses an existing Product Page.

6.2.10 The Seller shall ensure the Products are of satisfactory quality, that any refurbished Products are clearly displayed as such and that any Products that are sold as damaged or defective are clearly labelled as such in the Listing.

6.2.11 The Seller shall rectify any inaccuracy in any Product Page immediately upon knowledge of such inaccuracy. If for any reason the Seller is unable to make the necessary corrections, the Seller shall, as soon as reasonably practicable, promptly notify OnBuy, through the SCP, of any such inaccuracy and provide details of how the inaccuracy should be corrected.

6.2.12 Except where the relevant OnBuy Company is the deemed supplier for VAT purposes, the collection, reporting and payment of VAT to the relevant tax authority shall be the Seller's sole responsibility. The Seller shall also be responsible for the collection, reporting and payment of all other applicable taxes due in connection with the Products sold by the Seller via the OnBuy Marketplaces.

6.2.13 The Seller accepts all responsibility for ensuring that the transactions entered into with Customers are lawful in England and in the jurisdiction in which delivery is to be made to the Customer.

6.2.14 The Seller shall not list excessive volumes of Products on the OnBuy Marketplaces. The OnBuy Companies shall have sole discretion as to reasonable usage. The relevant OnBuy company shall inform the Seller if it has or is about to exceed a reasonable number of Listings and give the Seller 48 hours to reduce its Listings to a prescribed amount. If the Seller fails to reduce its Listings to the prescribed amount within that timeframe, the relevant OnBuy Company may reduce the Seller's Listings accordingly.

6.2.15 The OnBuy Companies reserve the right to place a limit on the volume or amount of Seller sales. This cap may be changed or removed at the sole discretion of the OnBuy Companies.

6.3 Seller Use of the SCP

6.3.1 The Seller shall:

- a. check the SCP each day for alerts from the OnBuy Companies of new Orders, cancellations, refunds, disputes, Customer message requests;
- b. ensure that the SCP is updated daily and accurately reflects the Seller's details, Orders including dispatches and tracking numbers;
- c. display the Seller's Holiday Period in the SCP;
- d. use reasonable endeavours to respond to enquiries from Customers and OnBuy Companies, including returns and disputes, within 48 hours, unless such enquiries are made during the Seller's Holiday Period, in which case the Seller shall respond within 48 hours of return;
- e. not use the SCP or any other part of the OnBuy Marketplaces to communicate with the Customers with the intention of enticing them to purchase the Products through any other means than through the OnBuy Marketplaces;
- f. neither engage in nor encourage communications outside of the SCP. Sellers may only communicate with Customers via the SCP.

6.4 Listing Prices

6.4.1 The Seller must add the Listing Price on the SCP;

6.4.2 When the Seller makes a Listing applicable for UK Sales, the Seller shall list the Product in GBP. When the Seller makes a Listing applicable for EU Sales, the Seller shall list the Product in Euro.

6.4.3 The Listing Price is solely determined by the Seller and shall be deemed to be inclusive of:

- a. any applicable VAT;
- b. delivery charges including import fees, duties and taxes;

6.4.6 Listing Prices shall not exceed £30,000 (or equivalent in other currencies) inclusive of VAT and delivery. The relevant OnBuy Company shall remove Listings that are priced in excess of £30,000 (or equivalent in other currencies) from the OnBuy Marketplaces;

6.4.7 The Seller acknowledges and accepts that:

- a. The Seller has sole responsibility to add correct Listing Prices and categorise each Product. The OnBuy Companies bear no responsibility for incorrect Listing Prices or wrongly categorised Products. The OnBuy Companies reserve the right to recover sums from the Seller if Products are found to have been incorrectly categorised.
- b. Once the Seller has dispatched the Product and the relevant OnBuy Company has sent a confirmation email to the Customer, the Seller has entered into a legally binding contract with the Customer and any errors in the Sale price cannot be changed.
- c. Where the Seller has updated the Listing Price, the updated Listing Price may take up to 2 hours to display on the Marketplaces. If a pricing error is discovered prior to dispatch, the Seller shall contact the Customer as soon as is practicable and the Order shall be cancelled, and the Seller shall process a refund within 2 days.
- d. Where packaging and postage costs or any other costs are not correctly inputted into the SCP, the Seller has no right to pursue the Customer for additional payments once the Customer has placed an Order.
- e. The OnBuy Companies may, at their own discretion, offer promotions for the purposes of increasing the Seller's sales. Any pricing changes actioned by the OnBuy Companies will not affect payments otherwise due to the Seller.

6.5 Processing Orders

6.5.1 The Seller is solely responsible for fulfilment of Orders.

6.5.2 Once the Seller has received an Order through the SCP, the Seller may decide to accept or reject the Order. If for any reason the Seller is unable to supply a Customer with all or part of the Order, the Seller will inform the Customer via the Customer's OnBuy account. Rejections may affect the Seller's performance metrics and cause the Seller to incur a refund fee pursuant to Clause 6.7. If the Seller accepts the Order, the Seller is obliged to fulfil and dispatch the Order as soon as is reasonably practicable and for receipt within the dispatch timeframe options in the SCP.

6.5.3 The Seller must select a designated delivery timeframe from between 1 and 30 days.

6.5.4 Orders must be dispatched within the Seller's Handling Time, which can be set in the SCP for a maximum of 10 days.

6.5.5 Priority Orders must be dispatched on the same day if ordered before the priority cut-off time set in the SCP.

6.5.6 Acceptance of the Order is achieved by email to the Customer, sent through the SCP at the dispatch of the Order.

6.5.7 Any enquiries relating to the Order or delivery must be dealt with through the SCP.

6.5.8 The Seller acknowledges and agrees that the OnBuy Companies shall, on the Seller's behalf, have the right to refund the Customer's payment for an Order (from the monies received by OnBuy from the Customer on behalf of the Seller) if the Seller doesn't meet the Delivery Timeframes chosen by the Customer based upon the options set by the Seller.

6.5.9 The Seller must provide the Customer with an appropriate invoice if requested by the Customer. For UK Sales where any of the OnBuy Companies are the deemed supplier for VAT purposes, the relevant OnBuy Company shall be responsible for providing the Customer with a VAT invoice.

6.5.10 The OnBuy Companies reserve the right to cancel an Order and process a refund if, in the OnBuy Companies reasonable opinion, it believes that the Seller is or will become in breach of these Seller Terms.

6.5.11 Where an Order is not marked as dispatched within 30 days of the Order being made, the sale will be automatically cancelled and refunded by the relevant OnBuy Company (on behalf of the Seller) from the monies received by the OnBuy Company from the Customer.

6.5.12 Where a Seller has not accepted an Order as described in 6.5.5 within the Handling Time that the Seller has set on the SCP, or where the relevant OnBuy Company reasonably believes that the Seller has rejected an Order, the relevant OnBuy Company shall be entitled to cancel the sale and refund the Customer's payment for that Order from the monies received by the relevant OnBuy Company from the Customer on behalf of the Seller.

6.5.13 If a Force Majeure Event takes place that affects the performance of the Seller's obligations under the Customer Terms:

6.5.13.1 the Seller will contact and notify the Customer as soon as reasonably possible; and

6.5.13.2 the Seller's obligations under the Customer Terms will be suspended and the time for performance of the Seller's obligations will be extended for the duration of the Force Majeure Event.

6.5.14 Where the Force Majeure Event affects the Seller's delivery of Products to the Customer, the Seller will endeavour to arrange a new delivery date with the Customer after the Force Majeure Event comes to an end. Alternatively, the Customer may cancel the Order.

6.6 Delivery, Post and Packing

6.6.1 The Seller shall be solely responsible and bear all risk and liability for sourcing, storing, selling and delivering all the Products in an Order to the Customer and shall use standards of skill and care reasonably to be expected of a professional supplier in doing so.

6.6.2 The Seller bears the risk in the Products until the Products have been delivered to the Customer. The Seller may reduce this risk by using a tracked delivery service to deliver Products to Customers.

6.6.3 If the Seller uses an untracked delivery service and the Products are not delivered to the Customer within the Delivery Timeframe or cannot be proven to have been delivered at all, OnBuy reserves the

right to require the Seller, at the Customer's option, to issue either a full refund or provide a replacement to the Customer, in which case the Customer shall not be required to return any Products delivered late unless the Seller can demonstrate (for example, by providing tracking or other evidence of delivery for the relevant Order) that the Products were successfully delivered to the Customer within the relevant Delivery Timeframe. If the Seller fails to provide a refund or a replacement, the relevant OnBuy Company shall have the right to recover the relevant sum pursuant to Clause 16.2.

6.6.4 The Seller shall be responsible for selecting in the SCP which delivery options shall apply.

6.6.5 If additional packaging and postage costs apply to the Products, where for example the Products are heavy, fragile, bulky, precious or perishable, the Seller is responsible for ensuring that these costs are included in the Listing Price.

6.6.6 The Seller must ensure that all the Products within the Order are wrapped in a professional manner. The wrapping must be appropriate for the Product (for example and without limitation):

- a. delicate items should be wrapped in protective packaging; and
- b. Products listed in any of the sex & adult categories should be delivered in discreet (opaque and not include any labelling which indicates the contents) packaging.

6.6.7 The Seller shall not include any promotional marketing material inside any packaging used to deliver the Product.

6.6.8 If the Seller uses a third-party to fulfil an Order, the Seller shall select a non-branded packaging option if such an option is available.

6.6.9 The Seller shall select the delivery options from the SCP that apply to the Product, and once an Order is made, the Seller must ensure that the Products are sent according to the delivery method selected by the Customer, or a faster and more secure method.

6.6.10 In the instance of non-delivery, mis-delivery, late delivery, theft or other error or mistake in connection with delivery of Products sold through the OnBuy Marketplaces, the Seller shall resolve any issues with its delivery provider and under no circumstances request the Customer resolves delivery with the delivery provider aside from Customer confirmation that he/she will be present at the delivery address at an agreed time.

6.6.11 Any customs and import fees and duties levied on an Order shall be the Seller's sole responsibility. If a Customer raises a query regarding any customs and import fees applicable to its Order, the Customer shall be entitled to reimbursement of such charges if it can provide evidence of the same with official documentation, in which case the relevant OnBuy Company shall reimburse the Customer and shall deduct the applicable customs and import fees from any payments due to the Seller in accordance with Clause 16.2.

6.6.12 The Seller shall not via the OnBuy Marketplaces export, directly or indirectly, any Products in breach of any applicable Laws or regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

6.6.13 The Seller must ensure that the value of the contents of all Product packages is correctly stated on the relevant packing materials to avoid the Customer being charged incorrect or excessive customs and import fees.

6.6.14 The OnBuy Companies accept no liability for any customs and import fees arising on any Products returned by the Customer to the Seller, which shall be the sole responsibility of the Seller. If, for any reason, an OnBuy Company incurs costs in respect of any sales that are a direct result of the mislabelling of consignments by the Seller, the relevant OnBuy Company shall have the right to deduct any such charges from any payments due to the Seller's payment in accordance with Clause 16.1. If such costs exceed the sums the relevant OnBuy Company holds on behalf of the Seller, the Seller shall make immediate payment of the costs to the relevant OnBuy Company upon demand.

6.7 Cancellations and Refunds

6.7.1 Where a Customer has a right to a full or partial refund as set out at Clause 9 of the [OnBuy Customer Terms](#), the Seller shall process the applicable refund to the Customer via the SCP within the relevant timescale. The OnBuy Companies reserve the right, at their sole discretion, with reasonable notice to the Seller, to refund the Customer on behalf of the Seller and recover the amount refunded from any monies owed to the Seller pursuant to Clause 16.

7 CUSTOMER CARE

7.1 The OnBuy Companies Customer Care Team shall deliver a customer care function for, and on behalf of the Seller. Where possible, and when the Customer Care Team deems it necessary to do so, the Customer Care Team shall resolve queries without recourse to the Seller but may contact the Seller.

7.2 With the exception of the response times set out in clause 9.1.2 (Chargebacks), the Seller shall respond within 48 hours via the SCP to all Customer communications relating to any queries or complaints regarding the quality or fitness for purpose of a Product, whether a Product meets the Seller's description or failed delivery of the Product.

7.3 If the Seller fails to provide a response to the Customer pursuant to 7.2, the Seller may receive a message from the relevant OnBuy Company, via the SCP or the Seller's email address, requesting a response to the Customer communication. The Seller must respond to OnBuy within 48 hours.

7.4 If the Seller fails to respond to the relevant OnBuy Company's message pursuant to 7.3, the relevant OnBuy Company may at its sole discretion process a refund to the Customer on behalf of the Seller and deduct the OnBuy Dispute Fee from the Seller's OnBuy account pursuant to Clause 16.2.

7.5 From 48 hours after the Customer's contact with the relevant OnBuy Company described in Clause 7.2, the Seller or the Customer may request that the OnBuy Companies' Customer Care Team conducts a review. If the Customer Care Team identifies that the Customer has reasonable grounds for dissatisfaction, then the OnBuy Companies' Customer Care Team shall deduct a the OnBuy Dispute Fee from the Seller's OnBuy account or pursuant to the mechanisms set out in Clause 16.2.

7.6 The Dispute Resolution Stage shall involve the Customer Care Team reviewing the full facts of the Dispute. The Customer Care Team may make further contact with the Seller and Customer to gather additional information.

7.7 Upon completion of the Dispute Resolution Stage, a decision will be made either in favour of the Seller or the Customer.

7.8 If the Customer Care Team:

7.8.1 finds in favour of the Seller, the Seller shall not be required to take any further action. This outcome shall not adversely impact the Seller's performance metrics and the OnBuy Dispute Fee described at 7.5 shall be refunded to the Seller;

7.8.2 finds in favour of the Customer, the relevant OnBuy Company shall process a refund to the Customer pursuant to 6.7.1. Such a finding may also adversely affect the Seller's performance metrics and may result in action being taken by the relevant OnBuy Company to restrict the Seller's access to the SCP pursuant to Clause 14.

7.8.3 The Seller accepts that the Customer Care Team described in this Clause 7 is supplied by the OnBuy Companies for the benefit of the Seller to enable the Seller to dedicate its resources to selling and to reduce the likelihood that the Seller shall be subject to chargebacks and legal proceedings. The Seller agrees to accept all decisions by the Customer Care Team.

7.9 The Seller accepts that the Customer may commence legal proceedings against the Seller in addition or in the alternative to contacting the Customer Care Team. The Seller shall, and shall procure that the Customer shall, release the OnBuy Companies from any Customer Claims (actual and consequential) of every kind and nature arising out of or in any way connected with such Customer claims and shall indemnify the OnBuy Companies against such Customer Claims.

8 VAT

8.1 The Seller is responsible for pricing Products, on a delivery duty paid (DDP) basis, inclusive of VAT.

8.2 Where an OnBuy Company is legally obliged to collect VAT and/or any other applicable taxes, charges or levies for any reason in any jurisdiction in respect of the Seller's use of the OnBuy Marketplaces, the relevant OnBuy Company will report and remit the relevant sums in respect of such VAT, other taxes, charges or levies directly to the appropriate national authorities, and will accrue such sums from the sums paid by a Customer in any transaction and so reduce by the value of the relevant VAT, and/or any other applicable taxes, charges or levies, the net sale proceeds otherwise due to the Seller for that transaction.

8.3 Where an OnBuy Company is not legally obliged to collect VAT or any other applicable taxes, charges or levies for any reason in any jurisdiction in respect of the Seller's use of the OnBuy Marketplaces, or any other transactions, the relevant OnBuy Company shall remit the net sale proceeds to the Seller inclusive of such VAT, or any other applicable taxes, charges or levies and the Seller shall be solely responsible for reporting and remitting the relevant sums in respect of such VAT, and/or any other applicable taxes, charges or levies directly to the appropriate national authorities. If an OnBuy Company incurs liabilities in respect of any failure by the Seller to correctly categorise its Products, or correctly remit VAT or any other applicable taxes, charges or levies directly to the appropriate national authorities, OnBuy reserves the right to deduct any such amounts from any payments due to the Seller in accordance with Clause 16.2.

8.4 The Seller shall notify the OnBuy Company as soon as possible if it becomes aware that the OnBuy Marketplaces are incorrectly displaying VAT or any other applicable taxes, charges or levies for any of the Seller's Products on the OnBuy Marketplaces, or if there has been any significant change in the Seller's tax position (e.g, additional tax registrations or de-registrations).

9 CHARGEBACKS

9.1 Fraud Related Chargebacks

9.1.1 The relevant OnBuy Company shall be responsible for Fraud Related Chargebacks except where the relevant OnBuy Company has instructed the Seller that an Order must be cancelled prior to the Order being dispatched or if OnBuy has reasonable grounds to believe that the Seller is complicit with the fraud.

9.1.2 If within 48 hours of the Order being placed, the relevant OnBuy Company has instructed the Seller that an Order should be cancelled prior to the Order being dispatched, the Seller must respond to the relevant OnBuy Company on the same day and to confirm that the Order has been either cancelled or dispatched.

9.2 Customer Dispute Chargebacks

9.2.1 The Seller shall be responsible for Customer Dispute Chargebacks including, inter alia, where a Product is not as described or is defective; and for delivery related reasons (except where the Seller has proof of delivery to the address the Customer requested in the Order).

9.2.2 OnBuy will automatically assign liability to the Seller and the relevant OnBuy Company will deduct:

- a. the amount of the chargeback (including all charges from banks or card providers); and
- b. The OnBuy Chargeback Fee

from any money owed to the Seller as net sale proceeds or otherwise. If the amount of the Customer Dispute Chargeback exceeds the monies owed to the relevant OnBuy Company by the Seller, the OnBuy Companies (as applicable) shall have the right to demand immediate payment by the Seller to the relevant OnBuy Company to cover any shortfall in accordance with Clause 16.2.

9.2.3 The relevant OnBuy Company shall use its reasonable endeavours to defend Customer Dispute Chargebacks raised against the Seller where the Seller can provide compelling evidence (as determined by the relevant payment processor), which shall be provided to OnBuy within 3 Business Days of the request by the relevant OnBuy Company. If no compelling evidence is provided, the relevant OnBuy Company shall have the right to accept the Customer Dispute Chargeback (for which the Seller shall be liable in accordance with Clause 9.2.1. and 9.2.2).

9.2.4 If the Customer Dispute Chargeback is successfully defended, the relevant OnBuy Company shall pay the Seller the full amount of the Customer Dispute Chargeback set out at 9.2.2 a) and b).

10 PERSONAL DATA

10.1 The Seller shall at all times comply with the [OnBuy Privacy Policy](#), all relevant legislation in particular, but without the Data Protection Act 2018 and the UK Data Protection Regulation and OnBuy's Data Processing Agreement, which is accessible and set out at Schedule 2 (below).

11 COMMUNICATIONS

11.1 The Seller shall communicate all matters with the relevant OnBuy Companies via a support ticket in OnBuy's Support Centre in the SCP.

11.2 The relevant OnBuy Companies shall communicate with the Seller via the contact details the Seller provided in its application or those details in the SCP.

12 NO PROMOTION

12.1 The Seller shall refrain from including links to, or otherwise providing the address of, or promoting, its (or any other) website on the SCP, any Listing on the OnBuy Marketplaces, in sales that were placed by the Customer on the Marketplaces, or in any other means of communication with the Customer.

12.2 The Seller may not send emails or catalogues or other promotional material to Customers introduced to the Seller by the OnBuy Companies, other than those which are branded solely as from the OnBuy Companies.

12.3 The Seller acknowledges and accepts that 'OnBuy' is a registered trademark of Visor Commerce Ltd (the holding company of the OnBuy Companies) and no rights or licences are granted to the Seller in this respect.

12.4 The Seller shall not bid on OnBuy's name, or variations of the OnBuy brand or domain name or brand name, on Google or any other search engines or any search sites.

13 SECURITY

13.1 The Seller shall be solely responsible for procuring, maintaining and securing its network connections and telecommunications links at its own cost.

13.2 The Seller shall use its own virus protection software and shall not knowingly access, store, distribute or transmit any viruses or knowingly introduce or permit the introduction of any viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful during the course of its use of the OnBuy Marketplaces.

13.3 The Seller must ensure its username and password logins are kept safe and not accessed by any other party. If these details are lost or the Seller becomes aware that they have been accessed by any other party, the Seller must report the incident to the OnBuy Companies immediately via a support ticket in OnBuy's Support Centre or, if the Support Centre is not working, by email to sellersupport@onbuy.com.

14 RESTRICTED SELLER ACCESS

14.1 The OnBuy Companies may at their sole discretion, partially or completely restrict the Seller access to the SCP in the following and any other reasonable circumstances:

14.1.1 If the Seller fails to fulfil any of its payment obligations set out in these Seller Terms;

14.1.2 on termination of these Seller Terms;

14.1.3 if the Seller fails to dispatch orders in a timely manner or at all;

14.1.4 if the Seller fails to adhere to Clause 7 (Customer care) of these Seller Terms;

14.1.5 if any of the OnBuy Companies, having made reasonable attempts to contact the Seller, believes that the Seller is and has been inactive for a period of at least 6 months;

14.1.6 if any of the OnBuy Companies have reasonable grounds to believe that the Seller is using the Site to sell fake/counterfeit Products or is otherwise infringing the intellectual property or proprietary rights of any third party;

14.1.7 if the Seller has a high rate of cancellations or refunds, or is failing in the relevant OnBuy Company's reasonable opinion to sufficiently deal with Customers' queries or complaints pursuant to Clause 7 (Customer Care);

14.1.8 if the relevant OnBuy Company has other reasonable concerns regarding the Seller's activity; or

14.1.9 pursuant to Clause 20 (Termination).

14.2 If an OnBuy Company partially restricts the Seller's access pursuant to Clause 14.1, the relevant OnBuy Company shall do so to the extent that the Seller can only view and manage live Orders and sales, view invoices between the Seller and the relevant OnBuy, mark Orders as dispatched and handle Customer feedback. During this time, the Seller's Listings will not be visible to Customers and Customers will not be able to place new Orders with the Seller.

15 FEES PAYABLE BY SELLERS TO ONBUY

15.1 The Seller shall pay OnBuy:

15.1.1 [Monthly Subscription Fee](#);

15.1.2 [Sales Fee](#);

15.1.3 Boost Fee as described in Schedule 3;

15.1.4 OnBuy Ads Fee as described in Schedule 3;

15.1.5 OnBuy Dispute Fee (if applicable);

15.1.6 OnBuy Chargeback Fee if applicable; and

15.1.7 Refund Administration Fee (if applicable).

15.1.8 Operational Costs Recovery Fee (if applicable)

15.2 Monthly Subscription

15.2.1 The Seller shall pay a Monthly Subscription Fee for each calendar month during the term of these Seller Terms. This fee is based on a monthly rolling contract and there is no minimum commitment.

15.2.2 The Monthly Subscription Fee shall be paid online by recurring payments made in advance commencing on the Commencement Date and thereafter on the subscription due date unless the Seller serves 30 days' written notice through the SCP to terminate these Seller Terms pursuant to Sub-Clause 20.1 (Termination).

15.2.3 Where the first Monthly Subscription Fee is taken on the 28th, 29th, 30th or 31st of a month, the subsequent due dates for the Monthly Subscription Fee will be as close to the original payment dates as possible and no later than the date on which the first Monthly Subscription Fee was taken. The

Monthly Subscription Fee is subject to VAT (where applicable), subject to OnBuy supplying the Seller with a valid VAT invoice.

15.2.4 The OnBuy Companies reserve the right to change the Monthly Subscription Fees upon 21 days' prior written notice to the Seller pursuant to Clause 24.4 (Variation).

15.3 Sales Fee

15.3.1 When a sale is made for a Product placed against the Seller's Listing, the Seller shall always pay the applicable Sales Fee to the relevant OnBuy companies.

15.3.2 If for any reason, the Seller provides the Customer with a full or partial refund pursuant to Clause 6.7, or if the relevant OnBuy Company provides the Customer with a full or partial refund on behalf of the Seller pursuant Clause 4.2.7, the relevant OnBuy Company will refund the relevant proportion of the Sales Fee to the Seller. The relevant OnBuy Company shall charge the Seller the applicable Refund Administration Fee. For avoidance of doubt, where a Sales Fee has been made up of two different percentages with a lower and upper threshold (see [Sales Fees](#)), any refunded Sales Fee will be paid in reverse order to how the Sales Fee was charged.

15.3.3 The applicable OnBuy Companies shall have the right to change the Sales Fees upon at least 30 days' prior written notice to the Seller.

15.4 Operational Cost Recovery Fee

15.4.1 If the Seller lists a Prohibited Product, the Seller shall pay OnBuy the Operational Cost Recovery Fee.

15.4.2 The Seller's obligation to pay the Operational Cost Recovery Fee shall commence 30 days after OnBuy's notification to the Seller that the Products listed by the Seller under are Specific Listing have been identified as Prohibited Products.

15.4.3 The Seller's obligation to pay the Operational Cost Recovery Fee shall cease upon the Seller providing OnBuy with satisfactory evidence (in OnBuy's reasonable opinion) that all the Products listed by the Seller under that Listing were not Prohibited Products.

15.4.4 The Seller shall pay the Operational Cost Recovery Fee on demand or OnBuy may deduct it pursuant to clause 16.2.

15.4.5 This Clause 15.4 is without prejudice to the right of OnBuy to claim general damages arising out of the sale of Prohibited Products by the Seller.

15.4.6 The Seller and OnBuy confirm that the Operational Costs Recovery Fee is a reasonable and proportionate to protect OnBuy's legitimate interest in increasing the trustworthiness of the OnBuy Marketplaces and managing the effects of the sale of Prohibited Products by the Seller.

16 SELLER PAYMENTS TO ONBUY

16.1 The OnBuy Companies shall have the right to obtain reimbursement from the Seller in any of the following circumstances:

16.1.1 The relevant OnBuy Company provides a refund to a Customer because the Seller did not deliver the Products pursuant to Clause 6 (Seller's Use of the OnBuy Marketplaces) of these Seller Terms, or the relevant OnBuy Company otherwise determines, consistent with Clause 10 (Consumer Rights Cancellations and Refunds) of the Customer Terms, that a refund is warranted in a particular circumstance;

16.1.2 The relevant OnBuy Company identifies erroneous or duplicate transactions related to a Seller;

16.1.3 The relevant OnBuy Company receives a chargeback from a Customer's payment card issuer or reversal of payment for the amount of a Customer's purchase from a Seller, or any other method of reversal of payment for the amount (or part thereof) of a Customer's purchase from a Seller;

16.1.4 Any sums pursuant to the fees set out in Clause 15 (Fees Payable by the Seller to OnBuy) of these Seller Terms are outstanding; or

16.1.5 The Seller's OnBuy account falls into a negative balance for any reason.

16.2 The Seller authorises the relevant OnBuy Company to use any or all of the following methods to seek reimbursement of any amounts owed by the Seller to OnBuy:

- a. deduction from future payments from the relevant OnBuy Company to the Seller,
- b. reversal of any credits to the Seller's OnBuy account balance,
- c. charge the Seller's card on file, or
- d. recovery from the Seller by any other lawful means, including by using third-party collections services.

16.3 The OnBuy Companies may charge the Seller interest and debt recovery costs pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 in addition to the outstanding amount.

16.4 Pursuant to Clause 14 (Restricted Seller Access) the OnBuy Companies may restrict the Seller's OnBuy account at any time pending payment of an outstanding balance.

17 PAYMENT TO THE SELLER

17.1 When payment is made by a Customer, the funds shall be paid to OnBuy Ltd or OnBuy (EU) Ltd in their role as commercial agent for the Seller and pursuant to these Seller Terms; 17.2 Payment by a Customer to the OnBuy Ltd or OnBuy (EU) Ltd settles the debt owed by a Customer to the Seller and the Customer will no longer owe that amount to the Seller.

17.3 Subject to 17.10, OnBuy (EU) Ltd or OnBuy Ltd, as commercial agent for the Seller, shall pay the Seller the Listing Price together with delivery costs for the relevant Product less any the Sales Fee set out at 15.3.1 and any other charges pursuant to these Seller Terms. Where OnBuy is the deemed supplier for the purposes of VAT, the relevant OnBuy Company shall also deduct VAT.

17.4 The Seller shall be able to separately view its UK Sales (in GBP) and EU Sales (in the relevant currency) via the SCP.

17.5 Payments pursuant to UK Sales shall be made by OnBuy Ltd to the Seller's OnBuy account in GBP.

Payments pursuant to EU Sales shall be made by OnBuy (EU) Ltd into the Seller's OnBuy account in EUR.

17.5 Subject to 17.10, the Seller will be able to request a withdrawal of funds no later than 7 days after the end of the Delivery Timeframe.

17.6 The relevant OnBuy company shall initiate Seller's pay-out pursuant to the Seller's request set out at 17.5 no later than the end of the next Business Day. The receipt of settlements as cleared funds in the Seller's bank account(s) may be delayed because of interbank systems over which the OnBuy Companies have no control.

17.7 The Seller will be able to transfer the funds to the Seller's bank account, the details of which the Seller provided during the Seller's application, unless those details have been changed by the Seller thereafter. 17.9 The Seller accepts that the OnBuy Companies have no liability to the Seller if the Seller provides or has provided incorrect bank details.

17.10 Under no circumstances shall the OnBuy Companies make payments due to the Seller to any third-party including any third-party bank account.

17.11 The OnBuy Companies have the right to withhold funds if they reasonably believe the Seller has breached these Seller Terms. This includes the retention of funds in the event Seller is suspected of selling products in contravention of the Prohibited Products Policy. In any instance that the Seller is suspected of selling counterfeit products, such retention shall remain in place unless and until the Seller is able to satisfy OnBuy, that all the suspected Prohibited Products are authentic. OnBuy reserves the right to share any concerns and evidence the Seller provides with the relevant law enforcement agency, regulatory authority, manufacturer and brand owner.

17.12 The relevant OnBuy Companies will provide the Seller with monthly VAT invoices for all fees and charges. The VAT invoice will be prepared and provided to the Seller during the subsequent month following the period for which the VAT invoice relates e.g. the VAT invoice relating to the calendar month of February will be prepared on the 1st of March, the VAT invoice relating to the calendar month of March will be prepared on the 1st of April, etc.

17.12 Sometimes the Customer may pay for Products using promotional codes or through other promotions. However, these promotions shall not affect the Seller's right to receive payment of the Listing Price pursuant to 17.3.

17.13 Seller payment queries of any kind (including disputes) must be raised with OnBuy Ltd or OnBuy (EU) Ltd within 12 months of the date of the Order and must be sent by made via the SCP. Any credit in the Seller's account which is unclaimed for 12 months or more will be retained by OnBuy Limited or OnBuy (EU) Limited (as applicable).

18 REPRESENTATIONS AND WARRANTIES

18.1 **General.** Each party represents and warrants that:

18.1.1 it is a business, it is duly organised, validly existing and in good standing under the Laws of its jurisdiction in which the business is operating, and in the case of the Seller, it holds a valid bank account that can transact in GBP;

18.1.2 it has all requisite rights, power and authority to enter into these Seller Terms and perform its obligations and grants the rights, licences and authorisations it grants hereunder;

18.1.3 any information provided or made available by one party to the other party, or its affiliates is accurate and complete, and it will promptly update such information as necessary to ensure it at all times remains accurate and complete; and

18.1.4 it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the UK Government, US Government, the European Union or its member states, or other applicable government authority.

18.2 Seller Warranties. The Seller represents and warrants that:

18.2.1 it shall comply with all applicable Laws and shall not cause any of the OnBuy Companies to be in breach of any applicable Laws and shall not infringe the Intellectual Property Rights of any third party in its performance of these Seller Terms;

18.2.2 it shall comply with all its obligations under these Seller Terms including the policies referred to herein;

18.2.3 it shall not undertake any anti-competitive behaviours or practices either of itself or in collusion with any other Sellers;

18.2.4 it shall perform all of its obligations in these Seller Terms (including to Customers) with reasonable care and skill and in accordance with best industry practice of an online seller, including that by listing a Product for sale on the OnBuy Marketplaces:

- a. it shall comply with all applicable laws and shall not cause the OnBuy Companies to be in breach of any applicable laws and shall not infringe the rights (including Intellectual Property Rights) of any third party in its performance of these Seller Terms;
- b. it owns the Product or is authorised by the owner to sell the Product on the OnBuy Marketplaces;
- c. it is able to transfer good title to the Product free from any third-party claims, liens or encumbrances;
- d. the details on Product Pages are accurate and complete and are not misleading or otherwise deceptive in any way;
- e. it shall dispatch Orders promptly and in accordance with the delivery standards set out at Clause 6 of these Seller Terms and in any event within the later of:
 - i. 24 hours from the time the Customer places the Order (unless a longer Handling Time has been set by the Seller in the SCP); and
 - ii. the expected dispatch date, as specified by the Seller at the time of the Order;
- f. the Product complies with all applicable Laws including the Laws of all countries in which the Product is made available via the OnBuy Marketplaces, the country in which the Customer resides and any other relevant country (including the country where the Product is manufactured), including any labelling requirements, prohibitions on sale, distribution or offering for sale of specific products, customs procedures, taxation, Intrastat, parallel importation, copyright levies, export controls, CE marking and any other relevant EU or UK required marks and labels relating to safety and environment regulations (including (but not limited to) applicable Plastic Packaging Tax, Extended Producer Responsibility (packaging and waste), the Electronic Equipment Act in Germany) and Product Safety. The Seller shall ensure that all Products it makes available for sale which are aimed at minors are fully compliant with

all relevant product health and safety legislation and shall provide any of the OnBuy Companies with documentary evidence of the Seller's compliance with this clause 18.2.3 f. within 48 hours of request.

- g. it shall not list any Product on the OnBuy Marketplaces and shall immediately remove and recall from the Customer any Products from sale which are or subsequently become:
 - i. considered by any local regulator or government body to be dangerous, harmful or hazardous, including all those listed as such on RAPEX, Safety Gate or similar; or
 - ii. subject to recall by the manufacturer or distributors.
- h. Where applicable, the Seller must ensure that it liaises directly with the responsible organisation in each of the Marketplace countries it lists in, to obtain the relevant Extended Producer Responsibility unique number, registration licence or identification for each of the categories of Product it lists. The Seller accepts that the OnBuy Companies may preclude Listings if details are not provided and agrees to provide any of the OnBuy Companies with documentary evidence of the Seller's compliance with this clause 18.2.3 h. within 48 hours of request.

18.3 **OnBuy Warranties.** Subject to Clause 19 (Limitation of Liability):

18.3.1 the OnBuy Marketplaces and all commercial agency services are supplied on an "as is" basis; and

18.3.2 except for the warranties, representations, conditions and obligations expressly set out in these Seller Terms, the OnBuy Companies disclaim all warranties, representations, conditions and obligations, whether express or implied, including:

- a. the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement; and
- b. that the OnBuy Marketplaces will meet the Seller requirements, will always be available, accurate, reliable, available, accessible, without interruption, timely, secure or free from error including, but not limited to malware, bugs and spam.

19 LIABILITY AND INDEMNITY

19.1 The Seller is responsible for losses the Customer may suffer which are caused by any breach by the Seller of the Customer Terms. Nothing in these Seller Terms shall limit or exclude the OnBuy Companies liability for:

19.1.1 death or personal injury caused by any of the OnBuy Companies negligence, or the negligence of OnBuy's employees, agents or subcontractors; or fraud or fraudulent misrepresentation;

19.1.2 Subject to Clause 19.1.1:

- a. The OnBuy Companies shall not be liable to the Seller whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any indirect or consequential loss or damage, or any:
 - i. loss of profits;
 - ii. loss of revenue;
 - iii. loss of anticipated savings;
 - iv. loss of business;
 - v. loss of opportunity;

- vi. loss of goodwill;
- vii. loss due to business interruption;
- viii. liability to third parties (including any obligation to pay the Customer compensation whether ex gratia or otherwise);
- ix. loss, alteration or corruption of data;
- x. additional operational and administrative costs and expenses;
- xi. any fines, penalties or expenses imposed by a regulator, governmental authority or professional body (each of items (i) to (xi) applying whether such loss is direct or indirect); and

19.1.3 The OnBuy Companies' total aggregate liability to the Seller arising under or in connection with the sale of the Products to the Customer pursuant to these Seller Terms, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall not exceed the total amount in Monthly Subscription Fees that the Seller has paid to the OnBuy Companies in the 12 months immediately preceding the date on which the claim arose; and

19.1.4 The OnBuy Companies shall assume no liability in relation to the Products. It is the Seller's responsibility to take out the relevant insurance necessary to cover the cost of the Products it supplies to Customers, inter alia, in the event that Products are lost or damaged in transit and relevant insurance to cover damage that the Products might cause Customers or third parties.

19.1.5 From time to time, it will be necessary for one or more of the OnBuy Companies to perform updates to and carry out essential maintenance to the OnBuy Marketplaces. Although the relevant OnBuy Companies shall endeavour to conduct such maintenance at times which are least likely to inconvenience the Seller, and the relevant OnBuy Company will always try to notify Sellers of any planned maintenance, OnBuy shall have no liability to the Seller for loss of profits or any other losses caused by maintenance carried out on the OnBuy Marketplaces or downtime of the OnBuy Marketplaces.

19.1.6 Except as set out in these Seller Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Law, excluded.

19.1.7 The Seller shall defend, indemnify and hold the OnBuy Companies (including their parents, subsidiaries, affiliates, officers, directors, employees, agents, and other representatives) harmless from and against any and all liabilities, costs, expenses, damages and losses (including, without limitation, any direct, indirect, special, or consequential losses, loss of reputation and all interest, penalties and legal and other professional costs and expenses, including, without limitation, the cost of internal resources) suffered or incurred by OnBuy arising out of or in connection with:

- i. Any breach by the seller of any provision contained in these Seller Terms or the Customer Terms;
- ii. Any actual or alleged defect in any Product (latent or patent);
- iii. Violation of any applicable laws (including costs, additional expenses, customs duties, or assessments, fines, citations, penalties, or seller's failure to comply with any request by an OnBuy company for any import or export documentation);
- iv. Breach of extended producer responsibility requirements
- v. Any claim made against an OnBuy company for actual or alleged infringement of a third-party's intellectual property rights arising out of, or in connection with, the manufacturing, supply, sale or use of the products;

vi. Any claim made against an OnBuy company by a third-party arising out of, or in connection with, the manufacturing, sale or supply of the products, or for any damage arising out of, or in connection with the products.

20 TERMINATION

20.1 Either party may terminate these Seller Terms by giving 30 days written notice to the other party at any time.

20.2 Without limiting the rights or remedies available to the OnBuy Companies and the Seller, each party may terminate these Seller Terms with immediate effect by giving written notice to the other party if:

20.3 the other party fails to pay any undisputed amount due pursuant to these Seller Terms on the due date for payment and fails to remedy that breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

20.4 the other party commits a material breach of any other terms of these Seller Terms which breach is irremediable or (if such breach is remediable) fail to remedy that breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

20.5 the other party repeatedly breaches any of the terms of these Seller Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect to these Seller Terms;

20.6 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to these Seller Terms is in jeopardy;

20.7 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits its inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

20.8 the other party takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring in such manner that the company resulting from the restructuring effectively agrees to be bound by or to assume the obligations imposed on it pursuant to these Seller Terms), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring in such manner that the company resulting from the restructuring effectively agrees to be bound by or to assume the obligations imposed on it pursuant to these Seller Terms), having a receiver or administrative receiver appointed to or a creditor or encumbrancer taking possession of any of its assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

20.9 the other party suspends or ceases, or threatens to suspend or cease, to carry all or a substantial part of its business.

20.10 Without limiting the OnBuy Companies' other rights or remedies, if the Seller fails to achieve the Seller performance metrics across the Marketplaces in any month, then the OnBuy Company will

provide the Seller with written notice of such failure setting out full details of such failure and the relevant OnBuy Company will work with the Seller to help the Seller meet the Seller performance metrics in subsequent months. If (subject to the relevant OnBuy Company providing the Seller with such notice after the first month) the Seller fails to meet the Seller performance metrics across the OnBuy Marketplaces for two consecutive months, the relevant OnBuy Company shall have the right, at its sole discretion, to:

20.10.1 grant the Seller only Restricted Access to the SCP; and

20.10.2 terminate these Seller Terms by giving the Seller 30 days' written notice.

20.10.3 without limiting OnBuy's other rights or remedies, the relevant OnBuy Company shall have the right to immediately suspend the Seller's access or grant the Seller only Restricted Access to the SCP if the Seller commits a material breach of these Seller Terms and, in the case of a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

21 CONSEQUENCES OF TERMINATION

21.1 If any OnBuy Company terminates these Seller Terms, that termination shall co-terminate the Seller's relationship with the other OnBuy Companies. All sums due to the OnBuy Companies in accordance with these Seller Terms shall become immediately due and payable by the Seller to the relevant OnBuy Companies.

21.2 If an OnBuy Company terminates these Seller Terms, the Seller shall continue to pay the relevant OnBuy Companies all outstanding Fees set out under Clause 15 (Fees) of these Seller Terms for, and related to, sales during the 30-day notice period, and any other amounts which are properly owed to OnBuy, together with any applicable VAT.

21.3 The Seller shall ensure that all Orders placed before termination are fulfilled (where the Seller's level of access to the SCP permits it to do so). If the Seller informs the relevant OnBuy Company that fulfilment of the Order is not possible, or if the Seller fails to fulfil an Order within 7 days of termination, the relevant OnBuy Company shall cancel the Order and process a refund to the Customer.

21.4 The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of these Seller Terms shall not be affected or prejudiced. This includes the right to claim damages in respect of any breach which existed at or before the date of termination or expiry.

21.5 The termination or expiration of these Seller Terms for any reason shall not affect any rights, obligations or liabilities accrued before the date of termination or expiry and all provisions regarding indemnification, warranty, liability and limits, confidentiality and protection of proprietary rights and trade secrets, and any provisions which expressly or by their nature are required to survive termination in order to achieve their purpose, shall so survive until it shall no longer be necessary for them to survive in order to achieve their purpose. Furthermore, termination of these Seller Terms shall not relieve the Seller of its respective obligations to supply Products that have been ordered and pay refunds and other charges even when such liabilities arise after date of termination or expiration (as one example: chargebacks).

21.6 All licences granted under these Seller Terms will expire on termination unless required for the purposes of Clause 21.2;

21.7 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

21.8 The Seller acknowledges and accepts that the OnBuy Companies reserve the right to pass the Seller's contact details held on the SCP (and any other details the OnBuy Companies hold relating to the Seller) to a Customer or third party where, on or after termination of these Seller Terms, any dispute remains or arises between the Seller and the Customer or third party.

22 CONFIDENTIALITY

22.1 The Seller and the OnBuy Companies agree that where a party is in possession of Confidential Information, subject to 22.2 all parties undertake to: (i) keep it confidential; (ii) use it only in connection with the performance of these Seller Terms; and (iii) not to disclose it to any other person or entity without the other parties' prior written consent.

22.2 The undertakings at 22.1 will not apply to information that otherwise becomes generally publicly available, was possessed prior to the Commencement Date (or prior to being designated as Confidential Information), or is lawfully acquired from an independent party who is under no obligation of confidence or information which is or has been independently developed by the recipient. All parties will be entitled to disclose Confidential Information to legal advisors to protect legitimate interests and to comply with any legal, professional or regulatory requirement.

22.3 The Seller agrees to reimburse any costs the OnBuy Companies may incur in complying with any such disclosure requirement relating to these Seller Terms imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against the relevant OnBuy Company, provided that the relevant OnBuy Company notifies the Seller promptly and, where reasonably or legally possible, prior to disclosure.

22.4 The Seller acknowledges that the OnBuy Companies are entitled to share the Seller's Confidential Information with its Affiliates and any subcontractors the OnBuy Companies use in the performance of these Seller Terms (and more generally to those contractors providing administrative, infrastructure and other support services to the OnBuy Companies) in each case whether located within or outside of the United Kingdom on the understanding that they will treat the information as Confidential Information in accordance with the provisions of these Seller Terms.

22.5 When offering OnBuy Companies' services to other parties, the OnBuy Companies may disclose to them that an OnBuy Company has acted for the Seller.

22.6 Nothing in these Seller Terms will prevent or restrict the OnBuy Companies from providing services to other parties (including services which are the same or similar to those offered under these Seller Terms) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing these Seller Terms subject to the obligations of confidentiality set out in Clause 22.1, even if those other parties' interests are in competition with the Seller. The Seller also agrees that to the extent that the OnBuy Companies possess information obtained under an obligation of

confidentiality to another client or other third party, the OnBuy Companies are not obliged to disclose it to the Seller or make use of it for the Seller benefit, however relevant it may be to these Seller Terms.

22.7 The obligations of confidentiality in these Seller Terms shall remain in effect for 5 (five) years after the termination or expiry of these Seller Terms.

23 INTELLECTUAL PROPERTY RIGHTS

23.1 The Intellectual Property Rights in the Marketplaces and in any materials and other documents or items that OnBuy Companies prepare or produce in any form whatsoever in connection with the OnBuy Marketplaces will belong to the relevant OnBuy Company absolutely.

23.2 The Seller may not use OnBuy Companies' Intellectual Property Rights without OnBuy Companies' prior written consent.

23.3 Subject to Clause 23.7, the Seller acknowledges and accepts that the copyright, design rights and all other Intellectual Property Rights in a Listing will belong to the relevant OnBuy Companies absolutely or have been licensed to one or more of the OnBuy Companies. The Seller agrees that its placing of a Product against a Listing does not grant the Seller any Intellectual Property Rights in that Listing.

23.4 OnBuy hereby grants the Seller a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right to use each Listing for the sole purpose of advertising the Products through the OnBuy Marketplaces.

23.5 Except as expressly stated in Clause 23.4, these Seller Terms does not grant the Seller any rights to, under or in, any copyright, designs, patents, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the OnBuy Marketplaces.

23.6 The OnBuy Companies represent, undertake and warrant that the legal ownership of all intellectual property in the OnBuy Marketplaces (including without limitation the SCP) or has an irrevocable licence to use such intellectual property for the purposes for which it is used is held by one or more of the OnBuy Companies.

23.7 The Seller's name, logo and all other Intellectual Property Rights that specifically relate to the Seller (including those in any materials and other documents or items that the OnBuy Company prepares for the Seller in connection with the OnBuy Marketplaces) will belong to the Seller absolutely.

23.8 The Seller grants the applicable OnBuy Company a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to exercise the copyright, publicity, database rights and all other intellectual property rights that it has in any logos, trademarks, brand names, data, text, information, usernames, graphics, images, photographs, profiles, audio, video, items, and links posted by it on the OnBuy Marketplaces in all media.

24 GENERAL

24.1 **Force Majeure:** Subject to 6.5.13 and 6.5.14, no party shall be responsible if it is prevented from or delayed in performing any of its respective obligations hereunder, or from carrying on its business as a result of a Force Majeure Event.

24.2 Counterparts: These Seller Terms may be executed in any number of counterparts and by either or both parties on separate counterparts, each of which shall be an original and all of which shall together constitute a single contract.

24.3 Entire agreement: These Seller Terms constitutes the entire agreement and understanding between the parties relating to its subject matter and supersedes any of the Seller's own terms, any previous agreement between the parties relating to any such subject matter. The Seller and the relevant OnBuy Companies acknowledges and agree that in entering into these Seller Terms, all statements, representations, warranties and undertakings on which it relies are incorporated into these Seller Terms and it does not rely on (and shall have no remedy in respect of) any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether party to these Seller Terms or not) which is not expressly set out in these Seller Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in these Seller Terms.

24.4 Variation: All Seller proposed changes to these Seller Terms shall be made in writing and shall not have effect unless and until agreed in writing by the relevant OnBuy Company. With the exception of clause 15.3.3, the OnBuy Companies may amend any of the terms of these Seller Terms by giving the Seller at least 14 days' prior written notice, after which the amendment shall be considered incorporated into these Seller Terms. The Seller's continued use of the OnBuy Marketplaces after the notice of the amendment will constitute the Seller's acceptance of the variation.

24.4.1 The 14-day notice period set out in Clause 24.4 shall not apply where:

- a. OnBuy is subject to a legal or regulatory obligation which requires it to amend these Seller Terms in a manner which does not allow it to respect the 14-day notice period; or
- b. Any exceptional or unforeseen circumstances which causes the OnBuy Company to amend these Seller Terms to address an unforeseen and imminent danger related to protecting itself, the Seller and other sellers, Customers and other business users from fraud, malware, spam, data breaches or other cybersecurity risks. If any variation proposed by an OnBuy Company is unacceptable to the Seller, the Seller shall be entitled to terminate these Seller Terms.

24.5 Order of precedence: In the event and only to the extent of any conflict between parts of the following (descending) order of precedence shall apply:

24.5.1 The Seller Terms (highest)

24.5.2 The Schedules

24.5.3 Documents that are included as links within these Seller Terms.

24.6 Anti-Bribery, Modern Slavery and Anti-Money Laundering: Both parties will comply with the Bribery Act 2010 and have and shall maintain in place throughout the duration of these Seller Terms respective policies and procedures, to ensure compliance with the Bribery Act 2010, the Modern Slavery Act 2015 and applicable anti-money laundering Law.

24.7 Assignment: The Seller shall not assign, transfer, charge, sub-contract or deal in any other manner with any of its rights or obligations under these Seller Terms without the OnBuy Company's prior written consent.

24.8 Notices: Any notice or other communication required or permitted to be given to a party pursuant to these Seller Terms shall be deemed to have been validly given if served personally on that party or if sent by first class pre-paid post to that party's registered office (if a company) or its principal place of business (in any other case) or if sent electronically to that party's email address as notified to the other party in writing, or through the SCP in accordance with this Clause. References in these Seller Terms to "writing" includes email (provided the email is supported by a valid server delivery receipt). Any notice or other communication shall be deemed to have been received:

24.8.1 if served personally, on signature of a delivery receipt;

24.8.2 if sent by first class pre-paid post, 2 Business Days after the date of posting; and

24.8.3 if sent electronically, 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, business hours mean 9.00am to 5.00pm (UK time) on a Business Day.

24.10 No Waiver: No failure or delay by a party to exercise any right or remedy provided under these Seller Terms shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24.10 Invalidity: If any provision of these Seller Terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Seller Terms, and the validity and enforceability of the other provisions of these Seller Terms shall not be affected.

24.11 Headings: The headings contained in these Seller Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Seller Terms.

24.12 No Partnership: Nothing in these Seller Terms is intended or shall be deemed to create a partnership or joint venture of any kind between the parties, nor authorise the Seller to act as agent for any OnBuy Company, and the Seller shall have no authority to act in the name of, or on behalf of an OnBuy Company, or otherwise to bind OnBuy in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24.13 No Third-Party Rights: These Seller Terms shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

24.14 Governing Law and Jurisdiction: These Seller Terms shall be governed by and construed in accordance with English Law. The OnBuy Companies and the Seller irrevocably agree that the courts of England shall have exclusive jurisdiction to resolve any dispute or claim arising out of or in connection with the subject matter of these Seller Terms (including non-contractual disputes and claims).

SCHEDULE 1

Term	Definition
"Application Fee"	The non-refundable payment made by the Seller to the relevant OnBuy Company to process the Seller's application to sell on the OnBuy Marketplaces. If the Seller's application is successful, the Application Fee shall be used by OnBuy as payment for the Seller's first Monthly Subscription Fee.
"Boost"	Enhanced promotional activity performed by the relevant OnBuy Company to increase the visibility of the Seller's Listing. Boost is optional by the Seller. Boost is further described in Part 2 of Schedule 3.
"Business Day"	Any day except any Saturday, any Sunday, or any day which is a public holiday in England or any day on which banks in London are closed for business.
"Cancellable Products"	Cancellable Product means a Product that is capable of return but excludes Non-Cancellable Products.
"Commencement Date"	The date upon which the Seller's application to sell on the OnBuy Marketplaces pursuant to these Seller Terms are accepted.
"Confidential Information"	Information about the other party that is by its nature confidential or is designated as such by the other party (whether in writing or orally).
"Customer"	A person who makes purchases from Sellers via the OnBuy Marketplaces.

Term	Definition
"Customer Care Team"	The OnBuy Companies' dedicated team of staff that seeks to resolve Customer disputes.
"Customer Dispute Chargeback"	Chargeback claims made by customers to banks/card providers in relation to Orders for Products that are either defective, not as described or undelivered.
"Customer Terms"	The legally binding agreement between the Seller and the Customer for the sale/purchase of Products on the OnBuy Marketplaces.
"Delivery Timeframes"	The timescale for delivery selected by the Customer based upon the options the Seller offers in the SCP. The Delivery Timeframe begins from the time of Seller acceptance of the Order and ends upon delivery.
"Dispute"	Dispute between the Seller and the Customer.
EU Sales	Sales made by the Seller which have a delivery address in a member state of the European Union.
"Force Majeure Event"	Any event that: (i) is beyond the reasonable control of, and is not due to the fault or negligence of, such party, and (ii) could not have been avoided by such party's exercise of due diligence, including, but not limited to, a labour controversy, strike, lockout, boycott, transportation stoppage, action of a court or public authority, fire, flood, earthquake, storm, war, civil strife, terrorist action, epidemic, or act of God; provided that a Force Majeure Event will not include economic hardship, changes in market conditions, or insufficiency of funds. Notwithstanding the foregoing sentence, a Force Majeure Event does not excuse any obligation to make any payment required by these

Term	Definition
	Seller Terms and will not affect either party's right to terminate these Seller Terms pursuant to Clause 20 (Termination).
"Fraud Related Chargebacks"	Chargeback claims made by Customers to banks/card providers in relation to fraudulent transactions and/or stolen cards.
GBP	Great British Pounds Sterling
"Handling Time"	The time selected by the Seller for the processing of an Order. This timeframe may not exceed ten days.
"Intellectual Property Rights"	All patents, trademarks, service marks, trade names, design rights, copyright, rights in software, database rights, rights in know-how and other intellectual property rights or equivalent forms of protection of whatever nature arising anywhere in the world, whether registered or unregistered and including applications for the grant of any such rights, and rights in Confidential Information.
"Law"	Laws of England including: a. all statutes, statutory instruments, regulations, by-laws, rules, ordinances, guidance or subordinate legislation from time to time made or issued to which a party is subject; b. the common law and the law of equity as applicable to the parties; c. any binding court order, judgment or decree; d. any applicable industry code, guidance, policy or standard which, in each case, is enforceable by law; or

Term	Definition
	e. any applicable direction, policy, rule or order that is legally binding on OnBuy and that is made or given by any Regulator.
"Listing"	The Seller's posting against Product for sale on the OnBuy Marketplaces. The Listing includes but may not be limited to: • Stock Keeping Unit • Condition • Price • Stock • Delivery Weight • Handling Time • Return Time • Free Returns Applicability • Warranty Period • Delivery Template • Sales Price • Boost
"Listing Price"	The price the Seller places against each Listing.
"Monthly Subscription Fee"	The sum paid by the Seller to OnBuy for each calendar month during which the Seller is a member of the OnBuy Marketplaces. The first month shall be paid for as part of the Application Fee if the Seller's application is successful.

Term	Definition
"Non-cancellable Products"	Includes: a. personalised items that are specifically made to a Customer's specification (e.g., a custom-made print), except where the Customer has chosen items from pre-determined upgrade options or standard off-the-shelf components; b. items sealed for health protection or hygiene purposes which a Customer has unsealed after they receive them; c. personalised items; d. perishable items, including but not limited to food, drink and fresh flowers; e. audio or video recordings or computer software which a Customer has unsealed or opened after they receive them; f. newspapers, periodicals or magazines; g. items which by their nature cannot be returned (such as where it is physically impossible to return items or where items cannot be restored to the same physical state as they were supplied; and h. digital downloads that have been activated.
"OnBuy Companies"	(1) OnBuy Ltd a company registered at 167-169 Great Portland Street, 5th Floor, London, England, W1W 5PF (registration number 15611912); and (2) OnBuy (EU) Ltd a company registered at 3 Dublin Landings, North Wall Quay, Dublin 1, DE1 C4E0 (registration number 764002)
"OnBuy Ads"	An enhanced marketing option which increases the visibility of the Seller's Listing's on OnBuy (within the OnBuy Marketplaces). Full details are provided in Schedule 3.

Term	Definition
OnBuy Chargeback Fee	The sum of £14.00 payable by the Seller to the relevant OnBuy Companies for the OnBuy Companies' administrative costs in the event of a Customer Dispute Chargeback. In the case of EU Sales, the OnBuy Chargeback Fee shall be €17.
OnBuy Dispute Fee	The sum of £6.50 payable by the Seller to the relevant OnBuy if the Customer raises a dispute and the relevant OnBuy reasonably believes the Seller may be in breach of these Seller Terms. In the case of EU Sales, the OnBuy Dispute Fee shall be €8.
"OnBuy Marketplaces"	OnBuy - UK online Marketplace and the OnBuy EU online Marketplace.
"Operational Costs Recovery Fee"	The fee paid by the Seller to OnBuy if the Seller sells Prohibited Products. This fee is calculated at the rate of 7.5% per month of the total payments made by Customers for each Listing of a Prohibited Product. Such payments shall be up to a maximum of 100% of the total payments made by Customers to the Seller for each relevant Listing which has been subject to the sale of Prohibited Products by the Seller.
"Order"	The offer (made by the Customer) to purchase the Seller's Product which the Seller can accept or reject.

Term	Definition
"Performance Metrics"	Ratings applied to each Seller based upon performance on the OnBuy Marketplaces which may be used by the OnBuy Companies and shared with Customers.
"Products"	Goods and services made for sale by the Seller.
"Product Page"	A Product specific page on the OnBuy Marketplace where Sellers can create a Listing.
"Refund Administration Fee"	20% of the Sales Fee refunded with a minimum fee of £0.25 per line item refunded and a maximum of £5.00 per line item on the Order (a line item relates to each specific Product which may be of any quantity). For example, if the Seller refunds a Customer £20.00 for a Product which attracts a category fee of 12%, the Seller's Refund Administration Fee will be £0.48 ($£20.00 \times 12\% \text{ commission fee} = £2.40 \times 20\% \text{ Refund Administration Fee} = £0.48$). In the case of EU Sales, the minimum fee per line item refunded is € 0.30 and a maximum of €6 per line item on the Order.
"Sales Fee"	A percentage (based upon the Product category) of the Listing Price and any applicable delivery costs. The Sales Fee for each Product category is shown here: Sales Fees.
"Seller"	The business that sells Products on the OnBuy Marketplaces.

Term	Definition
"Seller Control Panel (SCP)"	Seller's own dedicated area of the OnBuy Marketplaces which permits Sellers to amongst other things, list Products and communicate with Customers.
"Seller Holiday Period"	The feature which allows a Seller to set specific days where they are unable to fulfil Orders. This allows a Seller to either extend their dispatch date or completely hide their Listings from the OnBuy Marketplaces during periods of absence. It also allows the relevant OnBuy Company to set specific holiday days for all sellers, such as an additional and unexpected public holiday.
"Seller Terms"	This legally enforceable agreement between the relevant OnBuy Company and the Seller.
"Seller's Shop"	Customer facing page on the OnBuy Marketplaces which provides the Seller's details.
"UK Sales"	Sales made by the Seller which have a UK delivery address.
"VAT"	Value Added Tax at the prevailing rate

SCHEDULE 2

OnBuy Data Processing Agreement

THIS AGREEMENT is made between:

- (1) The Seller and
- (2) OnBuy Ltd (for all UK Sales)
- (3) OnBuy (EU) Ltd (for all EU Sales).

Each a "Party" and collectively hereafter referred to as the "Parties."

OnBuy Ltd and OnBuy (EU) Ltd are referred to collectively hereafter as the "OnBuy Companies" which all trade under the name 'OnBuy'. Full information about the OnBuy Companies is set out in Schedule 1 (above).

BACKGROUND

For UK Sales, OnBuy Ltd and the Seller shall each be considered Controller of Customers' personal data processed in connection with the OnBuy UK Marketplace for the Permitted Purposes.

For EU Sales, OnBuy (EU) Ltd and the Seller shall each be considered Controller of Customers' personal data processed in connection with the OnBuy EU Marketplace for the Permitted Purposes.

The relevant OnBuy company shall be the sole Controller of Customer's personal data processed in connection with the Platform and the purpose of which is not listed in this Data Processing Agreement.

1. INTERPRETATION

Term	Definition
"Commencement Date"	The date upon which the Seller commenced selling pursuant to the Seller Terms;
"Controller"	Has the meaning given to it in the GDPR;
"Data Protection Impact Assessment"	Means an assessment by a Controller, for the purposes of Article 35 of the GDPR, of the impact of certain envisaged Processing of Personal Data;
"Data Legislation"	Means all applicable data protection and privacy legislation and laws in force from time to time, as applicable to a Party or the services performed under the Seller Terms, including but not limited to: (a) the GDPR, the ePrivacy Directive 2002/58/EC, the UK Data Protection Act 2018 and the

Term	Definition
	Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) any laws which implement or supplement any such laws in any relevant jurisdiction; and (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (d) any guidance or codes of practice issued by any Supervisory Authority from time to time;
"Data Subject"	Has the meaning given to it in the GDPR;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with the Data Subject's rights under the Data Protection Legislation to access their Personal Data;
"GDPR"	General Data Protection Regulation (Regulation (EU) 2016/679) ("EU GDPR") and/or the UK GDPR (as defined in Part 1, Section 3(10) of the Data Protection Act 2018), as the context permits and to the extent applicable to a Party;
"International Organisation"	Has the meaning given to it in the GDPR;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, (as applicable) any enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which both Parties are bound to comply;
"Personal Data"	Has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR and includes also any breach of Article 5(1)(f) (the integrity and confidentiality principle) of GDPR;
"Processing"	has the meaning given to it in the GDPR, and the terms "Process" and "Processed" shall be construed accordingly;

Term	Definition
"Processor"	has the meaning given to it in the GDPR;
"Processed Data"	means such item(s) forming part of the Personal Data being processed by either Party under this Agreement as are more particularly specified in Annex 1 of this Schedule;
"Seller's Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Seller and/or of any Processor engaged in the performance of its obligations under this Agreement;
"Sub-processor"	Means any third party appointed to Process the Processed Data on behalf of the Seller;
"Supervisory Authority"	means the UK Information Commissioner and otherwise (where relevant) has the meaning given to it in the EU GDPR;
"Third Country"	Means any country other than the UK, a European Union Member State or a member of the European Economic Area at the time of transfer of the Processor Processed Data.

1.2 Clause, Annex and paragraph headings are illustrative and shall not affect the interpretation of this Agreement.

1.3 The Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.5 A reference to a person shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision, and such statute, statutory provision and subordinate legislation as amended, updated or re-enacted from time to time during the Term.

1.7 References to Clauses and annexes are to the Clauses and annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Annex.

1.8 Any words following the terms "including", "include", "in particular", "for example" or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

1.9 In the case of any ambiguity between any provision contained in the main body of this Agreement and any provision contained in the Annexes, the provision in the main body of this Agreement shall take precedence.

1.10 A reference to writing or written includes messages transmitted by email.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and continue in force until one of the following event occurs:

2.1.1 the termination or expiry of the commercial relationship between the Controller and the Processor including the completion of any post-termination obligations of the Processor set out in the Seller Terms which require the Processor to Process Processed Data; or

2.1.2 The Controller terminates the appointment of the Processor by giving not less than one (1) month's prior notice to the Processor, at which point this Agreement shall terminate with immediate effect.

2.2 On the expiry or termination of this Agreement, the Processor shall cease to Process the Personal Data.

3. DATA PROCESSING

3.1 For the purposes of the Data Protection Legislation, each Party shall be considered independent controller for the processing of Consumer's personal data in the framework of the Seller Terms and only for the purposes agreed between the parties and described in Annex 1 (as amended from time to time in accordance with Clause 5 of this Agreement). OnBuy shall be the sole Controller of the Customer's Personal Data for any other Purposes not listed herein.

3.2 The Seller shall provide reasonable assistance to OnBuy in the preparation of a Data Protection Impact Assessment where necessary.

3.3 The Seller shall take appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by any Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Processed Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects, including as appropriate:

3.3.1 the pseudonymisation and encryption of the Processed Data;

3.3.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

3.3.3 the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and

3.3.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;

3.4 The Seller shall ensure that its Personnel will comply with the present Data Processing Agreement and will not Process any personal data for purposes not listed herein and will keep said data confidential.

3.5 If the Seller transfers Personal Data to a Third Country or to any International Organization, the Seller shall ensure that any transfer is subject to one or more of the following appropriate safeguards:

3.5.1 The Third Country of destination is covered by an Adequacy Decision;

3.5.2 The existence of legally binding and enforceable instruments between public authorities or bodies;

3.5.3 The conclusion of Standard Contractual Clauses;

3.5.6 Binding Corporate Rules;

3.5.7 The existence of an approved Code of conduct;

3.5.8 Any other technical or organizational measures which ensures a protection of the Personal Data transferred higher or equivalent to the one provided by Privacy Laws referred herein.

3.6 The Parties shall assist one another, insofar as this is possible, for the fulfilment of the Parties' obligation to respond to requests for exercising data subject's rights, including Data Subject Access Requests.

3.7 Subject to Clause 3.8, the Seller shall notify OnBuy immediately if the Seller:

3.7.1 receives any Data Subject Access Request (or purported Data Subject Access Request);

3.7.2 receives any request to rectify, block or erase any Processed Data;

3.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

3.7.4 receives any communication from any Supervisory Authority or any other regulatory authority in connection with Processed Data;

3.7.5 receives a request from any third party for disclosure of Processed Data where compliance with such request is required by Law; or

3.7.6 becomes aware of any Personal Data Breach (and such notification shall be made not later than twenty-four (24) hours following the Seller becoming aware of each Personal Data Breach).

3.8 The Seller shall assist and co-operate with OnBuy in relation to OnBuy's compliance with its obligations under Data Protection Legislation (including each complaint, communication or request made under Clause 3.6 as well as any other complaint, communication or request relating to any Processed Data), and shall do so within the timescales reasonably required by OnBuy. In particular the Seller shall promptly provide the Controller with:

3.8.1 full details and copies of each complaint, communication or request received by the Seller (or received by OnBuy and relating to any Personal Data);

3.8.2 such assistance as is reasonably requested by OnBuy to enable OnBuy to comply with each Data Subject Access Request within the relevant timescales specified in or under the Data Protection Legislation;

3.8.3 copies of any Processed Data specified by OnBuy, and details of the Processing of such Processed Data by or on behalf of the Seller;

3.8.4 assistance as requested by OnBuy in relation to any Personal Data Breach, including supporting OnBuy in relation to any notifications it is required to make to Supervisory Authorities or affected Data Subjects;

3.8.5 assistance to ensure that Processing of Processed Data by or on behalf of the Seller complies with any exercise by any relevant Data Subject of any of his or her rights under Data Protection Legislation, including to ensure that the Personal Data relating to such Data Subject is (for example) deleted and/or rectified and/or made subject to restrictions in accordance with such exercise of such rights; and

3.8.6 assistance as requested by OnBuy with respect to any request from a Supervisory Authority, or any consultation by OnBuy with a Supervisory Authority.

3.9 The Seller shall maintain complete, accurate and up to date records and information of the Processing it carries out in connection with this Agreement, which shall contain as a minimum:

3.9.1 its details, OnBuy's details and the details of the Seller's data protection officer (if applicable) or, if the Seller is not subject to a mandatory requirement under Data Protection Legislation to appoint such an officer, the details of the person who has overall responsibility for the Seller's compliance with the Data Protection Legislation;

3.9.2 the categories of Processing of the Processed Data that are carried out by or on behalf of the Seller;

3.9.3 the details of any transfers to any Third Countries, where applicable, and the safeguards in place for each such transfer; and

3.9.4 accurate records of the technical and organisational measures that the Seller has in place in accordance with clause 3.3.

3.10 The Seller shall make available to OnBuy on request (and within three (3) days) all information necessary to demonstrate compliance by the Seller and OnBuy with their respective obligations under Data Protection Legislation (including the copies of the records referred to in clause 3.9).

3.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation or (if not so required) shall designate one of its senior managers as being responsible for overseeing and managing the Party's compliance with Data Protection Legislation.

3.12 The Seller shall ensure that its processors will comply with applicable data protection legislation and shall ensure appropriate technical, legal and organizational measures are in place prior to disclosing any personal data to third parties in the framework of this Agreement.

3.13 The Seller shall remain fully responsible for, and liable in respect of, all acts or omissions of its Processors.

3.14 In the event of a notification under clause 3.7.6, OnBuy shall at its sole discretion determine whether to provide notification to the Data Subject, any third party or Supervisory Authority, and the Seller shall not notify the Data Subject, any third party or Supervisory Authority unless such disclosure is required by Law or is otherwise agreed upon between the Parties.

3.15 At the written direction of OnBuy given at any time (whether during the continuance of this Agreement, on the termination or expiry of this Agreement, or at any time after its termination or expiry), the Seller shall promptly securely return to OnBuy and, if and when specified, securely delete, the Processed Data or any part of it that is specified by OnBuy (together with all copies of such Processed Data), unless the Seller is required by Law to retain the Processed Data (in which case it shall securely erase it as soon as such purpose has been fulfilled).

3.16 Nothing in this clause 3 shall relieve either Party of its own direct responsibilities and liabilities under the Data Protection Legislation, where applicable.

3.17 The Parties agree to take account of any guidance issued by the Supervisory Authority. OnBuy may on not less than thirty (30) days' notice to the Seller amend this Agreement to ensure that it complies with any guidance issued by a Supervisory Authority.

3.18 In relation to processing by a Party of Personal Data of another Party's staff or representatives for contract administration purposes, each Party does so as an independent controller and shall do so in compliance with their respective obligations under Data Protection Legislation.

4. DISPUTE RESOLUTION

4.1 The Parties shall act in good faith to try and resolve any disputes.

5. VARIATION

5.1 Subject to Clause 3.17, any amendment or variation to this Agreement shall be in writing and signed by duly authorized representatives of each of the Parties.

6. NOTICES

6.1 Any notice or other communication given by either Party under or in connection with this Agreement shall be in writing and shall be:

6.1.1 delivered by hand, courier or by recorded post or other next working day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case); or

6.1.2 sent by electronic mail to the Controller via the Seller's OnBuy account and to the Seller at the email address linked to its OnBuy account.

6.2 Any notice or communication shall be deemed to have been received: 6.2.1 if delivered by hand or courier, on the date on which the delivery receipt is signed;

6.2.2 if sent by recorded post or other next working day recorded delivery service, at the time recorded by the delivery service; and

6.2.3 if delivered by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when those business hours resume, and in this Clause 6.2 "business hours" means

9.00am to 5.00pm Monday to Friday on a working day, and in this Clause 6 “working day” means that is not a weekend or public holiday in the place of receipt.

6.3 This Clause 6 shall 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.

ANNEX 1

Description	Details
Subject matter of the Processing	Transactions placed by the Seller’s customers on OnBuy.
Duration of the Processing	Until terminated under the terms of the Data Processing Agreement
Nature and purposes of the Processing	To fulfill the customer transactions by delivering goods to customers, to comply with relevant legal obligations and provide remedies based on statutory guarantees and any other purpose which can reasonably be deemed accessory to the above-referred purposes.
Type(s) of Personal Data	Customer Name; Customer Address; Customer Email Address; Customer Order Reference Number; Customer Phone Number(s); Customer Gender (by title e.g. Mr, Mrs, etc.) IP address
Categories of Data Subject	Consumers i.e., those customers that buy from sellers on the OnBuy Marketplace Users of websites operated by Visor Commerce Limited

SCHEDULE 3

Additional Marketing Options

Background

For the avoidance of doubt, this Schedule 3 applies in addition to and in conjunction with the Seller Terms. This Schedule 3 describes the specific terms pursuant to which OnBuy offers Seller the option to activate:

Part 1 - OnBuy Ads

1 DEFINITIONS

Term	Definition
Lead Listing	Lead Listing is a Listing which is determined by the relevant OnBuy Company as a high performing Listing based upon price, delivery, Customer reviews and other factors. It is not possible to make OnBuy Ads Bids on Listings which are not Lead Listings.
OnBuy Ads	Marketing option that increases the visibility of the Seller's Listing's on OnBuy (within the OnBuy Marketplaces)
OnBuy Ads After Payment	Payment option that allows eligible Sellers to be charged after OnBuy Ads are run, either on the first day of each month or when a preset amount (known as a threshold), whichever comes first.
OnBuy Ads Balance	The total amount of money in the Seller's account that has been paid for the purpose of OnBuy Ads Funds.
OnBuy Ads Bid	An offer by the Seller, based upon price per click or price per impression (depending on the option the Seller selects when the bid is made), for the Seller's Listing to be subject to OnBuy Ads. The OnBuy Ads Bid is exclusive of VAT.
OnBuy Ads Dashboard	A page which enables a Seller to track the OnBuy Ads Balance and performance of OnBuy Ads.
OnBuy Ads Fees	Fees paid by the Seller to the relevant OnBuy based upon clicks and impressions (either or both) on the Seller's OnBuy Ads. OnBuy Ads Fees are subject to VAT, where applicable, at the prevailing rate.

Term	Definition
OnBuy Ads Prepayment	The non-refundable advance payment that the Seller makes to fund OnBuy Ads.

2 THE SERVICE

2.1 The Seller shall select the relevant OnBuy Ads option and (unless eligible for OnBuy Ads After Payment) make payment of the OnBuy Ads Funds into the Seller's OnBuy account.

2.2 The relevant OnBuy Ads Company shall provide the Seller with written confirmation when OnBuy Ads Funds are received.

2.3 The Seller may make an OnBuy Ads Bid on any of the Seller's Lead Listings.

2.4 Only a limited number of Listings per Product Page can be subject to OnBuy Ads at a time.

2.5 For as long as the Seller's OnBuy Ads Bid is the highest OnBuy Ads Bid for the relevant Product Page and (in the case of Sellers using OnBuy Ads Pre-payment) the Seller's OnBuy Ads Balance is at least equal to the Seller's OnBuy Ads Bid, the Seller's Listing shall be subject to OnBuy Ads.

2.6 If the Seller's OnBuy Ads Bid is not or is no longer the highest OnBuy Ads Bid for the Product Page, the Seller's Listing shall not be subject to OnBuy Ads, cannot receive third-party clicks or impressions and therefore the Seller's OnBuy Ads Balance shall not be debited for the relevant Product Page.

2.7 A Listing subject to OnBuy Ads can become ineligible for OnBuy Ads if the Listing falls out of the Lead Listings or if another Seller enters a higher OnBuy Ads Bid on the same Product Page.

2.8 A Listing which is not subject to OnBuy Ads can become subject to or reassigned to OnBuy Ads if the Listing becomes or returns to being a Lead Listing, or if any other seller who made a higher OnBuy Ads Bid withdraws its OnBuy Ads Bid for the relevant Product Page, or if the OnBuy Ads Balance of such other seller's OnBuy Ads Balance falls below the sum equal to that seller's OnBuy Ads Bid.

2.9 The Seller is entitled at any time to cancel, revise and withdraw an OnBuy Ads Bid and may make alternative OnBuy Ads Bids for a different Product Page, but the Seller shall remain liable for clicks or impressions (either or both) achieved during the period when the OnBuy Ads Bid results in an OnBuy Ads.

2.10 The Seller's OnBuy Ads Bids, the number of clicks and impressions and OnBuy Ads Balance shall be visible in the Seller's OnBuy Ads Dashboard.

2.11 OnBuy shall be entitled to use third party providers to operate and deliver the OnBuy Ads service.

3 CHARGES

3.1 In the case of Seller paying by OnBuy Ads Prepayment:

3.1.1 The Seller agrees that the relevant OnBuy Company shall automatically debit the Seller's OnBuy Ads Balance by the sum equal to the OnBuy Ads Bids used plus any applicable VAT.

3.1.2 The relevant OnBuy Company shall provide the Seller with an invoice each month in relation to the OnBuy Ads Fees automatically debited from the Seller's OnBuy Ads Balance.

3.1.3 OnBuy Ads Funds must be used by utilised by the Seller to make OnBuy Ads Bids within twelve (12) months of payment to OnBuy. Sums that are not utilised within this period shall become payable to the relevant OnBuy Company which shall invoice the Seller for such sums.

3.1.4 At termination of the Seller's OnBuy account, any OnBuy Ads Balance shall be forfeited by the Seller. The relevant OnBuy Company shall invoice the Seller for such sums.

3.2 In the case of Sellers paying by OnBuy Ads After Payment, the relevant OnBuy shall submit an invoice for OnBuy Ads used. Invoices for OnBuy Ads After Payment are payable within 30 days of the date of invoice. The OnBuy Companies have the right to charge interest on late payments at the rates of 8% above the prevailing Bank of England base lending rate.

4 REPRESENTATIONS AND WARRANTIES

4.1 The Seller represents and warrants to the OnBuy Companies that any selections, information and all material the Seller provides for OnBuy Ads:

4.1.1 complies with all applicable laws, rules and regulations;

4.1.2 does not and will not infringe the rights of any third party, including, but not limited to, any intellectual property rights, publicity rights or rights of privacy;

4.1.3 is truthful, up-to-date and accurate;

4.1.4 will not be misleading, deceptive, involve any misrepresentation, or imply or represent that any party has approval or sponsorship of another party that it does not have and will not contain any information or content that is illegal, contrary to any industry code, indecent, obscene, threatening, harassing, discriminatory, defamatory or in breach of confidentiality.

4.2 The Seller further represents and warrants that:

4.2.1 Any offer promoted in its OnBuy Ads and its content is valid and redeemable;

4.2.2 It has adequate inventory to support any offer promoted in the OnBuy Ads and its content;

4.2.3 It has obtained all necessary rights, consents, licenses or clearances in relation to the publication of the OnBuy Ads and their content and it has complied with all guidance of relevant regulatory bodies;

4.2.4 It has all required rights and licenses to grant the OnBuy Companies the license rights it is granting the OnBuy Companies OnBuy under this Schedule 3;

4.2.5 It will not, nor will it permit or encourage any third party, to use any means to generate fraudulent or invalid clicks, impressions, queries or other interactions;

4.2.6 It will not deliver malware via OnBuy Ads;

4.2.7 It will not copy, modify, damage, reverse engineer, decompile, disassemble, attempt to identify source codes, ideas or algorithms created by the OnBuy Companies, reconstruct, create derivative works of, or interfere with the proper working of OnBuy Ads.

5 DISCLAIMER OF WARRANTIES

5.1 To the fullest extent permitted by law, the OnBuy Companies disclaims all guarantees regarding positioning, frequency levels, quality or timing of the following in relation to OnBuy Ads:

5.1.1 sales or attributed sales;

5.1.2 click-through rates;

5.1.3 availability, quantity or delivery of impressions;

5.1.4 any user actions related to Seller's Listings;

5.1.5 conversion rates;

5.1.6 accuracy or availability of data;

5.1.7 the targeting, reporting, adjacency, ranking or placement of these enhanced marketing services;

5.1.8 the duration of the display;

5.1.9 the relevancy of search keywords or other content on the properties; and

5.1.10 any recommendations or guidance the OnBuy Companies may make available.

5.2 In addition, the OnBuy Companies may make no representations regarding revenue; the performance of Seller campaigns; any anticipated benefits related to OnBuy Ads, that they are suitable for the Seller's intended purposes; or that all features or functionality will be available to all sellers at the same time.

5.3 In addition, to the extent permitted by applicable law, the OnBuy Companies accept no liability for, and the Seller agrees not to hold the OnBuy Companies responsible, for any damages or losses (including, but not limited to, loss of money, goodwill or reputation, profits, or other intangible losses or any special, indirect or consequential damages) resulting directly or indirectly from the Seller electing to use OnBuy Ads, including but not limited to:

5.3.1 the deletion or modification of the service or its content;

5.3.2 the duration or manner in which the service is displayed; or

5.3.3 the OnBuy Companies' decision to end or remove these services.

5.4 Regardless of the previous paragraphs, if an OnBuy Company is found to be liable, the relevant OnBuy Company's liability shall be limited to the extent set out at Clause 19 (Liability and Indemnity) of the Seller Terms. For the avoidance of doubt, the Seller also specifically agrees that the indemnity provision set out at Clause 19 applies to OnBuy Ads.

6 GENERAL

The OnBuy Companies reserve the right in their sole discretion to suspend, terminate, restrict or reactivate the Seller's use of OnBuy Ads (in whole or in part), without notice, for any or no reason, and without liability to the Seller or any third party. In all cases, the running or reactivation of any OnBuy Ads campaigns after suspension or termination shall be at the relevant OnBuy Company's sole discretion. OnBuy also reserves the right to modify, suspend or discontinue OnBuy Ads in whole or in part.

Part 2 - Boost

1.1 Boost enables Sellers to increase the profile of their Listings on the OnBuy Marketplaces by accessing external marketing i.e. outside of the OnBuy Marketplaces which if clicked will direct customers to the Seller's Listing.

1.2 The Seller has the option to select which of its Listings are subject to Boost.

1.3 Selection is made by the Seller of the various options using or accessed through the Seller Control Panel.

1.4 The Seller and can disable Boosts at any time, although the system can take up to 8-hours to update across all channels (during which time the Boost will continue to apply).

1.5 When the Seller elects to Boost a Listing, the Seller agrees to pay OnBuy the Boost Fee.

1.6 The relevant OnBuy Company shall be entitled to use third party providers to operate and deliver Boost.

1.7 Each Boost option attracts a Boost Fee which is set out in paragraph 2 below.

2 The **Boost Fee** is a non-refundable fee paid by the Seller to the relevant OnBuy Company each time the Seller sells a Product from a Listing which the Seller has elected to Boost and the sale is made through a Boost channel i.e., OnBuy Companies do not charge a Boost Fee if the sale is made independently of Boost. The Boost Fee is set by the Seller on an individual Listing basis. For the avoidance of doubt, Boost Fee is an additional fee to the Sales Fee and is charged on the Listing Price and any applicable delivery costs.