

Vergo Pest Management Ltd

Terms & Conditions

(the “Conditions”)

1. INTERPRETATION AND BASIS OF THE AGREEMENT

1.1. Definitions

“Agreement”	means the contract between the Company and the Customer for the supply of Services in accordance with these Conditions and any other document expressly referred to as forming part of it, including the Order as amended from time to time in accordance with these Conditions;
“Business Days”	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
“Charges”	has the meaning given to it in Condition 4.1;
“Charges Adjustment Date”	means each anniversary of the Commencement Date until the Agreement is terminated in accordance with these Conditions unless stated otherwise in the Order;
“Commencement Date”	has the meaning given to it Condition 1.3.2;
“Company Materials”	has the meaning given to it in Condition 5.1;
“Company Property”	has the meaning given to it in Condition 25.1;
“Company”	means Vergo Pest Management Ltd (No. 03173779);
“Conditions”	means these terms and conditions as amended from time to time in accordance with Condition 26;
“Contract Year”	means any period of twelve (12) months (or shorter period in the period immediately prior to termination of the Agreement) commencing on the Commencement Date or any anniversary of such Commencement Date during the Initial Term and any Extended Term.
“Customer Default”	has the meaning given to it in Condition 6.2;
“Customer Materials”	means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Company in connection with the Services, including the items provided by the Customer to the Company on the Vergo Portal;
“Customer”	mean the person or firm who purchases the Services from the Company;
“Data Protection Legislation”	means: (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; (ii) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data;
“EU GDPR”	means the General Data Protection Regulation ((EU) 2016/679);
“Intellectual Property Rights”	means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Order”	Has the meaning given to it in the Order Form;
“Personal Data”	has the meaning given to it in the Data Protection Legislation;
“Premises”	has the meaning given to it in Condition 3.1.3;
“Relationship Managers”	means, unless otherwise is agreed between the parties in writing from time to time, the contact for each of the Company and the Customer set out in Appendix 4 of the Order under Tier 3 escalation;
“Services”	means the provision and supply of pest control services to be provided by the Company to the Customer as specified in the Order and including where applicable the provision of the Vergo Portal;

“UK GDPR”

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“VAT”

has the meaning given to it in Condition 4.2; and

“Vergo Portal”

the Company’s “Vergo Hub” system accessed by the Customer via:

<https://hub.vergo.uk/>

1.2. Interpretation

- 1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to writing or written excludes fax and email, except by email to the Relationship Managers.

1.3. Basis of the Agreement

- 1.3.1. The Order constitutes an offer by the Company to provide the Services in accordance with these Conditions.
- 1.3.2. Unless otherwise is set out in the body of the Order, the Order shall be deemed to be accepted when the Customer issues written acceptance of the Order or, if earlier, when the Company starts providing the Services, on which date the Agreement shall come into force (“**Commencement Date**”).
- 1.3.3. Any descriptive matter or advertising issued by the Company and any illustrations or descriptions of the Services contained in the Company’s catalogues or brochures are issued or published (including on its website) for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement nor have any contractual force.
- 1.3.4. These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.3.5. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 1.3.6. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2. Duration

The Agreement shall begin on the Commencement Date and continue until terminated in accordance with Condition 14.

3. Provision of the Services

- 3.1. The Company shall:
 - 3.1.1. perform the Services with reasonable skill, care and diligence, statutory and regulatory approvals as well as good industry practice including but not limited to Health and Safety standards;
 - 3.1.2. perform the Services in accordance with the Order in all material respects;
 - 3.1.3. perform the Services at the location(s) specified in the Order (the “**Premises**”) or as otherwise agreed with the Company in writing;
 - 3.1.4. in the provision of the Services and where necessary, from time to time, appoint a sub-contractor to perform or complete the Services; and
 - 3.1.5. meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.2. The Company reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, and the Company shall notify the Customer of its intention to do so in any such event.

4. Fees

- 4.1. Subject to any additional charges mandated by the Agreement, including under this Condition 4, Condition 5 and Condition 7, the price for the Services shall be as set out or described in the Order (“**Charges**”).
- 4.2. Unless otherwise specified by the Company in writing, all amounts payable by the Customer under the Agreement are exclusive of value added tax chargeable from time to time (“**VAT**”).
- 4.3. The Company shall invoice the Customer for the Services on the dates or at the intervals specified in the Order. If these are not specified, the Company shall invoice the Customer quarterly in advance for all Services due to be performed in the period to which the invoice relates.
- 4.4. Unless otherwise specified by the Company in writing, the Customer shall pay the Charges within thirty (30) days from the date of the relevant invoice. Time shall be of the essence as regards payment of the Charges.

- 4.5. Any additional invoicing and reporting requirements, including any reconciliations of accounts to process rebates and or credits requested by the Customer, may be subject to additional charges and Company's ability to accommodate these requirements.
- 4.6. The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.7. Any credits, amendments or deductions must be requested by the Customer within 30 days of the date of the initial invoice.
- 4.8. If the Customer fails to notify the Company of proposed credits, amendments or deductions in accordance with Condition 4.7, and notwithstanding Condition 16, the Customer will be deemed to have waived any entitlement to such credit, amendment or deduction.
- 4.9. Interest (together with any debt recovery costs) shall be payable on any amount payable under the Agreement which is not paid by the due date for its payment at the rate of eight per cent per annum above the Bank of England base rate. Such interest will accrue from the date the payment is due and not paid by the Customer.
- 4.10. The Company may increase the Charges with effect from each Charges Adjustment Date in line with RPIX as published for the 12 months immediately preceding the relevant Charges Adjustment Date.
- 4.11. Without prejudice to the provision of Condition 3.2, the Company shall be entitled to make fair and reasonable adjustments to the Charges then in force to take account of any change in circumstances, including any changes in relevant laws, which has an impact on the provision of Services or the cost of providing the Service. The Company shall use its reasonable endeavours to mitigate the effects of any such change in circumstances and to reduce any cost increases it may incur as a result.
- 4.12. In accordance with TUPE any inaccuracy in or omission from the information provided by or on behalf of the Customer in relation to the transferring employees or any transferring assets will be for at the Customer's cost.

5. Company Materials

- 5.1. As part of the provision of the Service, the Company may provide items of pest monitoring, bait holding, fly killing or other associated equipment and property of the Company ("**Company Materials**") to be placed in the Premises. All such Company Materials shall remain the property of the Company unless otherwise agreed by the parties in writing, and subject to any extra charges attributed to the same.
- 5.2. The Customer shall keep all Company Materials at the Premises in safe custody at its own risk, and shall maintain the Company Materials in good condition until returned to the Company, and not use or dispose of the Company Materials other than in accordance with the Company's written instructions.
- 5.3. The Customer shall notify the Company forthwith upon becoming aware that any of Company Materials are damaged or are not in good working order, condition and repair or are not functioning properly.
- 5.4. The Customer shall be liable for any loss, theft or destruction of or damage to the Company Materials howsoever caused from the date of delivery of the Company Materials to the Premises until it is removed from the Premises.
- 5.5. The Customer shall not sell, assign, mortgage, charge, underlet or part with the possession of the Company Materials or any interest in them, without the Company's prior written consent.

6. Customer's Obligations

- 6.1. The Customer shall:
 - 6.1.1. ensure that the terms of the Order and any information it provides in the Order are complete and accurate;
 - 6.1.2. where the Customer uses the Vergo Portal, comply with the Vergo Portal's terms of use and ensure that any open recommendations or any other actions allocated to the Customer in the Vergo Portal are complete and up to date;
 - 6.1.3. afford the Company, its employees, agents, consultants, subcontractors and/or its pest control partners access to the Premises on Business Days between the hours of 9am and 6pm or a such time agreed by prior written agreement by the parties to allow the Service to be provided;
 - 6.1.4. give the Company its employees, agents, consultants and subcontractors and/or its pest control partners all such information, facilities, assistance and confirmation as it may reasonably require in connection with the provision of the Service, and ensure that such information is complete and accurate in all material respects;
 - 6.1.5. prepare the Premises for the supply of the Services including where applicable in accordance with the reasonable instructions of the Company;
 - 6.1.6. immediately inform the Company in writing of any change in use, works permit and/or any other circumstances in relation to the Premises which may affect the provision of the Service;
 - 6.1.7. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 6.1.8. comply with all applicable laws and Health and Safety standards, including, where the Customer uses the Vergo Portal, the guidance and policies included in the Vergo Portal; and
 - 6.1.9. comply with any additional obligations as set out in the Order or any written communications by the Company including all recommendations made by the Company as to proofing and hygiene.
- 6.2. If the Company's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 6.2.1. without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services (including any subsequent visits/callouts to the Premises – which will incur an additional charge) until the Customer remedies the Customer Default;
- 6.2.2. the Company may, in its own discretion rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations (including relief from making good any visits as a result of any such suspension);
- 6.2.3. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 6.2; and
- 6.2.4. the Customer shall pay any Charges under the relevant Order where the Customer Default had occurred and reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default, including, without limitation in accordance with Condition 14.3.4.

7. Provision of the Services Outside Normal Hours

Provision of the Services by the Company or its pest control partners to the Premises outside the hours of 9am and 6pm on Business Days will be subject to an additional charge at the Company's standard rates for such visits for the time being in force.

8. Insurance

- 8.1. Each party shall, during the term of the Agreement and for a period of one year afterwards, maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent businessperson in connection with the risks associated with the Agreement, and produce to the other party, upon reasonable notice, full particulars of that insurance and the receipt for the then current premium.
- 8.2. The Customer shall insure such insurable Customer Materials in its full replacement value as notified by the Company from time to time against all risks prudently insurable against with a reputable insurer during the term of the Agreement. The Customer shall notify the Company forthwith upon making an insurance claim in respect of any of the Company Material and shall not agree the settlement of such claim without the Company's prior written consent. The Customer shall appoint the Company as its agent for the purpose of dealing with such claim and shall authorise the insurer to pay any settlement of the claim in respect of such Company Materials to the Company.

9. Exclusion of Liability

- 9.1. The Company shall not be liable for:
 - 9.1.1. economic loss which may be incurred by the Customer or any third party which shall include, without limitation, loss of profits, reputation, goodwill, business, use of any interest, services of an employee or agent, anticipated savings, expenses rendered futile by the breach and its expenses caused by the breach; or
 - 9.1.2. any other consequential or indirect loss of damage which may be incurred by the Customer of any third party; or
 - 9.1.3. any direct loss other than as described in Condition 10.1; or
 - 9.1.4. any claim made against the Customer by any third party (third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Company's personnel, regulators and customers of the Customer) howsoever any such loss of damage or claim was caused, even if such loss, damage or claim was, or ought reasonably to have been, in the parties' contemplation at the date of the Agreement as being likely to occur; or
 - 9.1.5. loss of agreements or contracts; or
 - 9.1.6. additional costs of procuring and implementing replacements for, or alternatives to, Services or Company Materials not provided in accordance with the Agreement. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials and these incurred as a result of the Customer Default.

10. Limitation of Liability

- 10.1. Nothing in the Agreement shall be taken to exclude either party's liability for death or personal injury caused by negligence or fraud or fraudulent misrepresentation or bribery.
- 10.2. Subject to Condition 9 and Condition 10.1, each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, or otherwise arising, in connection with the Agreement, shall be limited to the lower of: (i) an amount equal to 100% of the Charges paid and payable by the Customer in the Contract Year within which such liability arises; or (ii) one million pounds sterling.

11. Statutory Obligations of the Parties

- 11.1. The parties warrant that at all relevant times they will be fully compliant with statutory and appropriate regulations.
- 11.2. The Customer acknowledges that the provision of the Services does not absolve the Customer from any of its responsibilities, duties or obligations which the Customer may have under any legislation in relation to the Premises.

12. Indemnities

- 12.1. The Customer agrees to indemnify the Company in respect of any loss or damage which the Company, its employees, agents, consultants, subcontractors and/or pest control partners or any third party may incur arising out of the misuse by the Customer of the Services or of the Customer Property in breach of any of the terms of the Agreement.
- 12.2. Subject to Condition 10.2, each party shall indemnify the other against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the other party (the “**Indemnified Party**”) arising out of or in connection with any claim brought against the Indemnified Party for actual or alleged infringement of a third parties Intellectual Property Rights, to the extent that the infringement or alleged infringement results from the receipt or use of the Services; the Customer Materials; or the Company Property.

13. Force Majeure

- 13.1. The Company shall not have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Company.
- 13.2. The Company shall notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 13.3. The Company undertakes to use its reasonable endeavours to overcome any such circumstances but reserves the right to cancel, suspend or vary its obligations under the Agreement.

14. Termination

- 14.1. Unless otherwise agreed in the Order, and without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party not less than 3 months' written notice of its intention to terminate the Agreement, including any Order, provided that such termination shall not take effect until the expiry of the Initial Term or Extended Term (as applicable).
- 14.2. Without affecting any other right or remedy available to it, the Company may terminate the Agreement immediately by giving a notice in writing to the Customer if the Customer:
 - 14.2.1. commits a material, serious or persistent breach or non-observance of the terms of the Agreement and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so; or
 - 14.2.2. fails to pay to the Company any sum due under the Agreement within 30 days of its due date or if the payment is in relation to an invoice, 30 days from the date of that invoice; or
 - 14.2.3. fails to remedy any Customer Default in accordance with Condition 6.2 within 14 days; or
 - 14.2.4. commits fraud or serious misconduct or neglect in the discharge of its duties hereunder or is convicted of any criminal offence or commits an act of dishonesty; or
 - 14.2.5. takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applies to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, is wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), has a receiver appointed to any of its assets or ceasing to carry on business or suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.3. Upon termination of the Agreement the Customer shall:
 - 14.3.1. immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.3.2. promptly return all of the Company Materials to the Company. If the Customer fails to do so, then the Company may enter the Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for the safe keeping of the Company materials and will not use them for any purpose not connected with the Agreement;
 - 14.3.3. where applicable, seize the use of the Vergo Portal and delete any access information provided by the Company for such access; and
 - 14.3.4. if it terminates the Agreement before the end of the then ongoing term, the Customer shall pay to the Company by way of liquidated damages on the date of such termination, a sum equal to 50% of the Charges in respect of the remainder of the then ongoing term, together with all other sums due to the Company on or before the end of the then ongoing term under the Agreement.
- 14.4. Termination of the Agreement shall not entitle the Customer to be refunded any sum previously paid to the Company.
- 14.5. Following termination of the Agreement for whatever reason, the Company shall be under no further obligation to provide services to the Customer.
- 14.6. Any termination of the Agreement shall not prejudice any rights of the parties which shall have accrued previously.

15. Assignment

The Agreement may be assigned by the Company without the Customer's consent but the Agreement may not be assigned by the Customer without the Company's prior written consent.

16. No Waiver

- 16.1. The Company's failure to exercise or its delay in exercising any of its rights, powers or privileges hereunder shall not operate as a waiver of any of them in any manner whatsoever or affect its subsequent exercise of any of them.
- 16.2. Subject to Condition 4.8, no waiver by either party shall be effective unless it is in writing.

17. Entire Agreement

- 17.1. The Agreement and all the documents referred to in it, constitute the entire agreement between the Company and the Customer, relating to the subject matter and no representation or statement not contained in the Agreement shall be binding on either party unless agreed in writing and signed by both parties.
- 17.2. The Agreement shall expressly override all or any terms or conditions sought to be imposed by the Customer however communicated to the Company and whether before or after the date of the Agreement.

18. Notices

- 18.1. In the case of the Company, any notice or other communication required to be given under the Agreement shall be in writing, sent by prepaid registered post, addressed to VERGO PEST MANAGEMENT LTD UK Ltd, 2 Olympus Park Business Centre, Quedgeley, Gloucester, GL2 4DH or via email to the email address set out in the Order.
- 18.2. Any such notice or other communication will be deemed to have been duly served or given:
 - 18.2.1. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); or
 - 18.2.2. if personally delivered, at the time of delivery; or
 - 18.2.3. if sent by email, on the first day following successful transmission.
- 18.3. If notice is not given or served between the hours of 9am and 6pm on a Business Day, it will be deemed to have been given or served on the next Business Day.

19. Confidentiality

- 19.1. Subject to Condition 19.3, the Company and the Customer each agree to keep confidential the other's confidential information, other than to the extent necessary to perform its obligations or exercise its rights under the Agreement.
- 19.2. Notwithstanding Condition 19.1, the Company may refer to the Customer as a customer of the Company in press releases or in marketing or sales material.
- 19.3. The obligations of confidentiality in this clause do not apply to the extent disclosure is required by law or the listing rules of a stock exchange, a direction by government authority or a regulator, or disclosure to professional advisors in connection with the Agreement.

20. Data Protection

- 20.1. Each party shall comply with its respective obligations under applicable Data Protection Legislation and this clause 20.
- 20.2. For the purposes of relevant Data Protection Legislation, the activities contemplated by the Agreement do not include the processing of personal data. However, in order to facilitate this Agreement, either party may keep and maintain records relating to the other party under the Agreement and do so as an independent data controller. This may include limited personal data of employees; such as contact email address.

21. Law and Jurisdiction

- 21.1. **Governing law.** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law.
- 21.2. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

22. TUPE

In the event that there is a transfer of employees under TUPE to the Company, the Customer shall indemnify the Company against all losses that the Company may suffer or incur arising out of or in connection with any claim made or brought by any individual against the Company as a result of the transfer of responsibility for the provision of the Services and which relates to circumstances or events occurring or arising at any time prior to transfer to the Company.

23. Dispute Resolution

- 23.1. Should a dispute arise between the parties, that is unable to be resolved at operational level, such dispute will be escalated to the Relationship Managers.
- 23.2. Any failure to achieve a successful resolution to a dispute between the Relationship Managers, within fourteen days, the parties will proceed with the detailed dispute resolution procedures established in the Order.

24. Anti-Bribery

The parties warrant that neither of them has offered or procured to be offered to their respective employees a bribe of any kind or a gift as an inducement or reward for the awarding of the Agreement.

25. Intellectual Property Rights

25.1. In relation to the Company's Intellectual Property Rights arising from the provision of Service including but not limited to the Vergo Portal and materials published on or produced using it, including any Health and Safety documentations, reports and images; the Company's operating systems; and the Company Materials (together, the "**Company Property**"):

- 25.1.1. the Company and its licensors shall retain ownership of all Intellectual Property Rights in Company Property;
- 25.1.2. the Company grants the Customer, or shall procure the grant to the Customer of, a fully paid-up, non-exclusive, royalty-free licence during the term of the Agreement to use and / or modify the Company Property for the purpose of receiving and using the Services; and
- 25.1.3. the Customer shall not sub-license, assign or otherwise transfer the rights granted in Condition 25.2.1 to any third party.

25.2. In relation to the Customer Materials, the Customer:

- 25.2.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- 25.2.2. grants to the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Agreement for the purpose of providing the Services to the Customer.

26. Variation

26.1. Except as set out in Condition 4.10, no variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).