

GENERAL CONDITIONS

The customer's attention is drawn in particular to the provisions of clause 10.

1. **Interpretation**
- 1.1 **Definitions.** In these Conditions, the following definitions and rules of interpretation apply:
 - Business Day** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
 - Claim** means a claim made by the Customer in accordance with clause 5.2 for either Damaged Goods or a Short Delivery.
 - Conditions** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.2.
 - Contract Form** the contract form setting out the details of the Contract between the Supplier and the Customer.
 - Contract** the Contract Form and the Conditions constituting the contract between the Supplier and the Customer for the sale and purchase of the Goods.
 - Damaged Goods** means Goods that do not conform with the Specification.
 - Force Majeure Event** has the meaning given in clause 11.
 - Goods** the goods (or any part of them) set out in the Order.
 - Order** the Customer's order for the Goods, as set out in the Contract Form.
 - Short Delivery** means where the quantity of the Goods is less than the quantity set out in the Order (except where the Supplier has specified that a delivery is to be made in instalments in accordance with clause 4.7)
 - Specification** any specification for the Goods, that is agreed in writing by the Customer and the Supplier and amended from time to time in writing by the Customer and the Supplier.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to **writing** or **written** includes faxes and emails.
2. **Basis of contract**
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
3. **Goods**
- 3.1 The Goods are described in the Specification. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.1 shall survive termination of the Contract.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.3 Where the Customer commissions the Supplier under or in connection with the Order to create any work, design, concept, data, invention, recipe, new product or improvement:
 - 3.3.1 ownership of such works, designs, concepts, data, inventions, recipes, new products and improvements including all intellectual property rights therein shall vest in the Supplier upon their creation and any right, title or interest which may be vested in the Customer is hereby assigned to the Customer with the intent that all such intellectual property rights shall be the sole and absolute property of the Supplier; and
 - 3.3.2 the Customer shall not be permitted to sell such unique Goods to any third party without the Supplier's prior written consent.
4. **Delivery**
- 4.1 The Supplier shall deliver the Goods to the Customer at the Supplier's premises (**Despatch Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 At the Customer's request, cost and risk, the Supplier shall arrange delivery to another location set out in the Order or such other location as the parties may agree.
- 4.3 In the case of bulk Goods, unless the parties have agreed otherwise the Company may deal with and/or mix apparently similar goods consigned by or for the Customer without distinguishing between consignments.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS (TOLL CONTRACT)



- 4.4 Delivery of the Goods shall be completed on the Goods' departure from the Despatch Location.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by the exit of the UK from the EU (**Brexit**), a Force Majeure Event or the Customer's failure to provide the Supplier with adequate despatch instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by Brexit, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **Quality**
- 5.1 On the date of delivery of the Goods, the Customer shall inspect the quantity and quality of the Goods to check whether they correspond with the relevant Order.
- 5.2 The Customer shall notify the Supplier in writing of a Claim within 24 hours of the time of the delivery which gives rise to the Claim. The Customer must keep the damaged Goods for inspection and collection.
- 5.3 Subject to clause 5.4, if:
- 5.3.1 the Customer gives notice in writing to the Supplier of a claim;
 - 5.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4 For the avoidance of doubt, the Supplier shall not be liable for Goods in any of the following events:
- 5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3; or
 - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
 - 5.4.3 the defect arises as a result of the Supplier following any Specification supplied by the Customer; or
 - 5.4.4 the defect arises as a result of the Supplier using any ingredients sourced by the Customer that do not conform to the Specification or are contaminated; or
 - 5.4.5 the Goods pass their "use by" date; or
 - 5.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
6. **Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on:
- 6.1.1 completion of delivery; or
 - 6.1.2 at the time the Goods are collected from the Supplier by the Customer or the Customer's authorised representative.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods so that they remain readily identifiable as the Supplier's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
 - 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
 - 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2 then, without limiting any other right or remedy the Supplier may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS (TOLL CONTRACT)



7. **Product Recall**

- 7.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.
- 7.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.

8. **Price and payment**

- 8.1 Subject to clause 8.3, the Customer shall pay for Goods in accordance with this clause 8.
- 8.2 The price excludes:
- 8.2.1 the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and
 - 8.2.2 any other Excluded Costs specified on the Contract Form, which shall be invoiced to the Customer in addition to the Price; and
 - 8.2.3 amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.
- 8.3 In any event, the Customer shall pay the Minimum Contract Value as specified in the Contract Form.
- 8.4 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after it confirms the relevant Order to the Customer. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Contract Number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.
- 8.5 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.5.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - 8.5.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 8.5.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.9 The Supplier may suspend all further deliveries of Goods until payment has been made in full.
- ## 9. **Termination and suspension**
- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;
 - 9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 9.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 9.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 9.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 9.2.7 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 9.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.6 (inclusive);
 - 9.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
 - 9.2.10 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2.1

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS (TOLL CONTRACT)



- to clause 9.2.8, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.4 The Customer acknowledges that the Supplier may on commencement of this Contract incur significant expenditure relating to production of the Goods including (without limitation) purchasing bespoke packaging materials or bespoke ingredients ("Production Costs") in reliance of the Customer placing minimum or ongoing orders for the Goods. Without prejudice to any other remedy available to the Supplier, the Customer shall indemnify and keep indemnified the Supplier for the balance of the total Production Costs in the event that the Customer fails to fulfil the minimum order quantity agreed.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
10. **Limitation of liability**
- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- 10.1.2 fraud or fraudulent misrepresentation; or
- 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 10.1.4 defective products under the Consumer Protection Act 1987; or
- 10.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods supplied under the relevant Contract.
11. **Customer's Indemnity**
- 11.1 The Customer shall indemnify the Supplier against all Supplier and third party;
- 11.1.1 claims, liabilities, costs, expenses, damages, losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties); and
- 11.1.2 legal costs (calculated on a full indemnity basis); and
- 11.1.3 all other reasonable professional costs and expenses suffered or incurred by the third party and Supplier arising out of or in connection with any defect in the Goods
- arising as a result of the Supplier using any ingredients sourced by the Customer that do not conform to the Specification or are contaminated.
- 11.2 This indemnity shall apply whether or not the Customer has been negligent or at fault.
- 11.3 If any third party makes a claim, or notifies an intention to make a claim, against the Supplier which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Supplier shall
- 11.3.1 as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
- 11.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer such consent not to be unreasonably conditioned, withheld or delayed) provided that the Supplier may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Customer, but without obtaining the 's consent) if the Supplier believes that failure to settle the Claim would be prejudicial to it in any material respect]
- 11.3.3 subject to the Customer providing security to the Supplier to Supplier's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as Customer may reasonably request to avoid, dispute, compromise or defend the Claim.
12. **Force majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
13. **General**
- 13.1 **Assignment and other dealings.** The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 13.2 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 13.3 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law 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.
- 13.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not

**TERMS AND CONDITIONS FOR THE
SUPPLY OF GOODS (TOLL CONTRACT)**



possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.5

Notices.

13.5.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

13.5.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.6

Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7

Information. The Customer agrees to make available its financial, accounting and other information reasonably requested by the Supplier within 7 Business Days of written request. The Customer acknowledges that such information may be supplied by the Supplier to certain interested parties including (without limitation) its bankers or any invoice discounting provider.

13.8

Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.9

Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).