

ADVANCE SOURCING TERMS AND CONDITIONS OF PURCHASE

1 INTERPRETATION

1.1 In this Agreement, the following definitions apply:

- "Advance Sourcing"** KO2 LTD trading as ADVANCE SOURCING incorporated in England and Wales with company number 4021532 whose registered office is at The Dairy Lodge, Dunston Business Village, Dunston, Staffordshire, ST18 9AB
- "Agreement"** means the terms and conditions between the Parties set out in this document;
- "Client"** means a person, firm, business or company who has requested Advance Sourcing to procure Goods and in relation to whom Advance Sourcing places an Order with the Supplier;
- "Confidential Information"** in relation to each Party means any and all information concerning the other Party's business of which it becomes aware as a result of or in connection with this Agreement and/or any Contract entered into under it;
- "Contract Prices"** means the prices for the Goods as agreed in writing between the Parties from time to time, such prices to be applicable for such periods as may be agreed in writing between the Parties from time to time. Such prices shall be binding on the Supplier;
- "Contract"** means in relation to each Order, the separate contract between the Supplier and Advance Sourcing for the supply and purchase of the Goods specified in that Order, and **"Contracts"** shall be construed accordingly;
- "Delivery Location"** means the location to which the Goods are to be delivered, as specified in the relevant Order;
- "Goods"** means the goods to be supplied by the Supplier to Advance Sourcing, as agreed in writing between the Parties from time to time;
- "Intellectual Property Rights"** copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **"Intellectual Property Right"** means any one of the Intellectual Property Rights;
- "Order"** means an order for Goods submitted by Advance Sourcing to the Supplier in accordance with this Agreement;
- "Specification"** means the specifications for the Goods agreed in writing between the Parties from time to time; and
- "Supplier"** Means the person, firm or company from whom Advance Sourcing purchased the Goods; and
- "Term"** means the term of this Agreement, being the period starting on the Commencement Date and ending on the date this Agreement is terminated in accordance with its terms, both dates inclusive.

- 1.2 In this Agreement (except where the context otherwise requires):
 - (a) use of any gender includes the other genders, use of the singular includes the plural and vice versa and reference to a "person" includes any individual, firm, unincorporated association or body corporate; and
 - (b) reference to a statutory provision includes a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it.

1.3 The headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation.

2 TERM

2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force unless and until terminated by either Party pursuant to clause 15.

3 SUPPLY AND PURCHASE ARRANGEMENTS

- 3.1 During the Term and subject to the provisions of this Agreement, the Supplier shall supply such quantities of the Goods as may be ordered by Advance Sourcing from time to time. By entering into this Agreement the Supplier is offering to provide the Goods specified in Orders made by Advance Sourcing during the Term.
- 3.2 Unless the Parties otherwise agree in writing, this Agreement shall apply to all arrangements between the Parties in relation to the supply and purchase of the Goods during the Term.
- 3.3 Nothing in this Agreement shall restrict Advance Sourcing from placing orders for similar or equivalent Goods with any third party supplier during the Term. Advance Sourcing gives no representations or guarantees as to the volume or value of Orders that will be placed with the Supplier during the Term.

4 ORDERS

- 4.1 Each Order shall create a new and separate Contract for the sale and purchase of the Goods specified in that Order. No terms or conditions endorsed on, delivered with or contained in the Supplier's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 4.2 The Supplier acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Advance Sourcing which is not set out in this Agreement or a Contract. Nothing in this clause shall exclude or limit Advance Sourcing's liability for fraudulent misrepresentation.
- 4.3 By accepting an Order, the Supplier agrees to supply the Goods on the terms and conditions of this Agreement.
- 4.4 In the event of inconsistency between this Agreement and the Order or any other Contract documentation, this Agreement shall prevail.

5 CONTRACT PRICES AND PAYMENTS

- 5.1 In relation to each Contract, the price to be paid by Advance Sourcing for the Goods shall be the Contract Prices then in force and stated in the relevant Order. The Contract Prices are inclusive of all packing, carriage and insurance costs and exclusive of any applicable Value Added Tax or other sales tax.
- 5.2 The Supplier shall invoice Advance Sourcing in respect of each Contract on delivery of the Goods to the Delivery Location. The Supplier's invoices shall include a description of the Goods provided and the relevant order number if applicable together with an itemised statement of any costs and expenses claimed under the invoice and supporting receipts.
- 5.3 Advance Sourcing shall pay all invoices by the last business day of the month following the month in which the Goods were delivered provided that, if in the opinion of Advance Sourcing any invoice is incorrect or does not comply with clause 5.2, Advance Sourcing shall notify the Supplier and payment shall not be due to the Supplier for the price set out in such invoice unless and until a correct invoice has been submitted to Advance Sourcing.
- 5.4 If any sums are due to Advance Sourcing from the Supplier, then Advance Sourcing shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from Advance Sourcing.
- 5.5 If Advance Sourcing is required, pursuant to any applicable present or future law, rule or regulation of any competent governmental or other administrative body, to make any withholding in respect of tax or otherwise from any amount or amounts payable to the Supplier pursuant to a Contract, Advance Sourcing shall pay any amounts net of such withholding.

6 SUPPLIER PERFORMANCE

- 6.1 Without prejudice to the provisions of Part IV of the Agricultural Act 1970 (as amended) the Supplier warrants that the Goods shall, upon delivery:
 - (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended) and be fit for any purpose held out by the Supplier or made known to the Supplier at or prior to the relevant Contract being formed; and
 - (b) comply with all relevant statutes, regulations (whether specifically relating to animal feed products or otherwise); and
 - (c) conform with the Order and any specification and/or composition supplied or advised by Advance Sourcing to the Supplier (including without limitation the Specification).
 - 6.2 The Supplier shall demonstrate on demand the conformity of the Goods to the requirements of clause 6.1 as appropriate and the conformity of the Supplier and its processes to any legal, regulatory or statutory requirement.
 - 6.3 The Supplier warrants that any information provided by it or on its behalf to Advance Sourcing or a Client relating to the Goods shall be accurate and up to date.
 - 6.4 Without prejudice to any other rights or remedies which Advance Sourcing may have, if any of the Goods fail to comply with the provisions set out in clause 6.1 Advance Sourcing shall be entitled to avail itself of any one or more remedies listed in clause 8.
- 7 DELIVERY, RISK AND TITLE**
- 7.1 Delivery of the Goods shall be effected either:
 - (a) by the Supplier delivering the Goods or having them delivered to the Client at the Delivery Location; or

- (b) by the Client collecting the Goods from the Delivery Location after Advance Sourcing has notified the Client that the Goods are available for collection, and the expressions "delivery", "deliver" or "delivered", where used in this Agreement, refer to delivery made pursuant to either of those methods.
- 7.2 Where method (b) above is specified, the Supplier shall give notification to Advance Sourcing that the Goods are available for collection in writing and shall use reasonable endeavours to do so not less than three (3) business days prior to the date on which the Goods are available for collection.
- 7.3 Where method (a) above is used:
- (a) the Client shall be responsible for unloading the Goods from the appropriate vehicle at the Delivery Location; and
- (b) delivery shall be completed on the commencement of the unloading of the Goods at the Delivery Location.
- 7.4 Where method (b) above is used:
- (a) the Supplier shall be responsible for loading the Goods onto the appropriate vehicle at the Delivery Location; and
- (b) delivery shall be completed on the completion of the loading of the Goods at the Delivery Location.
- 7.5 The actual method of delivery shall be specified on the Order.
- 7.6 The Supplier shall aim to deliver the Goods to the Delivery Location within 5 business days of the date of the Order.
- 7.7 The Supplier shall use reasonable endeavours to deliver the Goods on the date quoted for delivery. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event.
- 7.8 If the whole or any part of the Goods are not delivered within 2 business days after the original due date (as specified in the relevant Order or as otherwise agreed between the Parties) then, without prejudice to any other rights which it may have, Advance Sourcing reserves the right to:
- (a) cancel the relevant Contract in whole or in part;
- (b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (c) recover from the Supplier expenditure reasonably incurred by Advance Sourcing in obtaining Goods in substitution from another supplier and claim damages for any additional costs, loss or expenses incurred by Advance Sourcing which are attributable to the Supplier's failure to deliver the Goods subject to such recovery and claim being limited to the total price of the Goods in the relevant Order.
- 7.9 Advance Sourcing shall have the right to change its delivery instructions including the delivery date at any time by giving 3 days notice in writing to the Supplier.
- 7.10 The Supplier shall ensure that each delivery is accompanied by such information as is specified in the Order together with:
- (a) a delivery note which shows, inter alia, the order number, date of order, number of packages and contents;
- (b) where required, such information as is specified in Part IV of the Agriculture Act 1970;
- (c) instructions as to handling, storage, use, care, maintenance and safety and shelf life of the Goods;
- (d) warning labels dealing with any hazards or threats to safety; and
- (e) manufacturing batch number.
- 7.11 The Supplier shall comply with all of its legal obligations in relation to health and safety in relation to the Goods and shall as a continuing obligation surviving completion or earlier termination of each Contract provide the Client and Advance Sourcing with such information and assistance concerning the Goods as the Client or Advance Sourcing may reasonably require to enable the Client and Advance Sourcing to comply with any applicable legal obligations in relation to health and safety in relation to the Goods (including any obligations under the Products of Animal Origin (Import and Export) Regulations 1996, the Products of Animal Origin (Import and Export) (Amendment) Regulations 1997, the Feeding Stuffs (Sampling and Analysis) Regulations 1999, the Products of Animal Origin (Import and Export) (Amendment) (England) Regulations 2001, the Products of Animal Origin (Third Country Imports) (England) Regulations 2003 (as amended) and the Importation of Processed Animal Protein Order 1981 (as amended)).
- 7.12 Signature on behalf of the Client of a delivery note or other document presented for signature on delivery of the Goods is not evidence that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of this Agreement or the relevant Order. The delivery shall be not deemed to have been accepted and completed until the Client has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.13 The Goods shall remain at the risk of the Supplier until delivery to the Client.
- 7.14 Property in the Goods shall not pass to Advance Sourcing until the Supplier has received in cash or cleared funds payment in full of the price of the Goods. Advance Sourcing may resell the Goods in the ordinary course of its business before property in the Goods has passed to it.

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8.1

REMEDIES

Subject to clause 7.8, and without prejudice to any other right or remedy which Advance Sourcing may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of a Contract Advance Sourcing shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by Advance Sourcing or by a Client:

- (a) to rescind the Order;
- (b) to reject the Goods (in whole or in part) and, in the case of Goods return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund from the Goods so returned (and for costs incurred by Advance Sourcing in returning those Goods) shall be paid immediately by the Supplier. If Goods are rejected by Advance Sourcing, for whatever reason, the Supplier shall collect the Goods from the Delivery Location at its own expense;
- (c) at Advance Sourcing's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- (e) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and/or
- (f) subject to clause 11, to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

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ASSIGNMENT AND SUB-CONTRACTING

9.1

The Supplier shall not be entitled to assign this Agreement or any Contract or any part of them without the prior written consent of Advance Sourcing.

9.2

Advance Sourcing may not assign this Agreement or any Contract or any part of them to any person, firm or company without the prior written consent of the Supplier.

9.3

The Supplier will not be released from its obligations under this Agreement or any Contract by virtue of the appointment of any sub-contractor and will be fully responsible for any acts or defaults, of any sub-contractor, its employees and agents as if they were the acts or defaults of the Supplier.

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INDEMNITY

10.1

The Supplier shall indemnify Advance Sourcing against all liabilities, costs, expenses, damages and losses suffered or incurred by Advance Sourcing arising out of or in connection with:

- (a) any claim made against Advance Sourcing for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;
- (b) any claim made against Advance Sourcing by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach of this agreement or the negligent performance of this agreement by the Supplier; and
- (c) any claim made against Advance Sourcing by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier.

10.2

Nothing in this clause shall restrict or limit Advance Sourcing's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

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LIMITATION OF LIABILITY

11.1

Subject to clauses 11.3 and 11.4:

- (a) the Supplier's total liability, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence, arising in connection with any Order shall be limited to the higher of 125% of the price paid or payable by Advance Sourcing for the Goods included in the relevant Order and £7,500; and
- (b) if Advanced Sourcing makes a claim against the Supplier for the aggregate loss or damage suffered or incurred by Advanced Sourcing and caused or contributed to by a series of defective Orders the Supplier's total liability, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence, arising in connection with such Orders shall be limited to the aggregate of the liability cap specified for each such Order in clause 11.1(a).

11.2

Subject to clauses 11.3 and 11.4, Advance Sourcing's total liability, whether in contract, tort, misrepresentation, under statute or otherwise (including without limitation the Civil Liability (Contribution Act) 1978), howsoever caused including by negligence, arising in connection with any Order shall be limited to the price paid or payable by Advance Sourcing for the Goods included in the relevant Order plus interest thereon.

11.3

Subject to clause 11.4, neither Party shall be liable to the other, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence, for any:

	(a)	loss of profit (direct or indirect);		winding up of the Supplier or any steps are taken (including the making of an application or the giving of any notice) by the Supplier or any other person for the appointment of any administrator in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier or if the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
	(b)	loss of revenue, loss of production or loss of business (in each case whether direct or indirect);		
	(c)	loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);		
	(d)	loss of anticipated saving or loss of margin (in each case whether direct or indirect);		
	(e)	indirect, consequential or special loss,		
		which arise out of or in connection with the Contract or any Order. Liability incurred by Advance Sourcing to a third party (including without limitation a Client) shall not be considered indirect, consequential or special solely by reason of the fact that the relevant loss was incurred by a third party.		
11.4		Nothing in these Conditions shall limit the either party's liability to the other for:	15.3	Subject to the provisions of clause 15.4, each Party's further rights and obligations in relation to this Agreement shall cease immediately upon termination of this Agreement, but such termination does not affect a Party's accrued rights and obligations as at the date of termination or expiry.
	(a)	death or injury resulting from that party's negligence;		
	(b)	fraud or fraudulent misrepresentation;	15.4	Notwithstanding the expiry or termination of this Agreement, the provisions of clauses 10 to 14 inclusive of this Agreement (together with any provisions necessary for their interpretation or enforcement) shall remain in full force and effect.
	(c)	breach of the terms implied by section 12 of the Sale of Goods Act 1979;		
	(d)	breach of section 2 of the Consumer Protection Act 1987; or	15.5	Termination of this Agreement shall not automatically terminate Contracts in place between the Supplier and Advance Sourcing that shall, subject to the remainder of this clause 15.5, continue until expiry or termination of the Contract in accordance with this Agreement. Upon termination of this Agreement, however, Advance Sourcing shall be entitled at its sole option to cancel Orders which have yet to be delivered and/or Contracts without incurring liability to the Supplier under the relevant Contract, this Agreement or otherwise.
	(e)	any matter, liability for which the relevant party cannot legally limit or exclude or attempt to limit or exclude.		
12		FORCE MAJEURE		
12.1		The Supplier shall not 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 the Supplier'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, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors. Where it is possible to do so the Supplier shall use its reasonable endeavours to offer suitable alternative Goods.	16	GENERAL
			16.1	If any provision of this Agreement shall be declared or become unenforceable, invalid or illegal for any reason whatsoever, the other provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without the inclusion of the unenforceable, invalid or illegal provision. The Parties shall use reasonable endeavours to agree a replacement provision that best meets the commercial and economic results intended under this Agreement.
13		INSURANCE	16.2	The failure or delay by either Party to exercise any right or remedy that it has or may have under this Agreement or at law shall not operate as a waiver of that right or remedy. The waiver by either Party of a breach or default of any provision of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or any other provisions.
13.1		The Supplier shall maintain the following insurance policies with a reputable insurer and shall provide a copy of the insurance policies and proof of payment of the current premium to Advance Sourcing on request:	16.3	This Agreement constitutes the entire agreement and understanding of the Parties relating to the subject matter of this Agreement and, in the absence of fraud, supersedes any previous written or unwritten agreements, undertakings, representations, warranties and arrangements of any nature relating to such subject matter.
	(a)	product liability insurance of not less than £2,000,000 per occurrence; and		
	(b)	public liability insurance of not less than £2,000,000 per occurrence.	16.4	No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties by authorised representatives.
		Such insurances shall be on a claims arising basis or shall be maintained in force for a reasonable period after the termination of this Agreement. The Supplier shall promptly advise Advance Sourcing of any change to the above insurances.	16.5	The text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement shall require the prior approval of each Party. The Supplier shall not use the name and/or logo of Advance Sourcing for any purpose without the prior written consent of Advance Sourcing.
14		CONFIDENTIALITY	16.6	This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original and all the counterparts together shall constitute one and the same instrument.
14.1		Each Party acknowledges and agrees Confidential Information is confidential information. Each Party agrees that it shall not permit the duplication, use or disclosure of any Confidential Information to any person (other than its own employees, agents or representatives who need to have such information for the performance of their obligations under this Agreement) unless such duplication, use or disclosure is specifically authorised in writing by the other Party or unless it is required by law. Confidential Information does not include information, which at the time of disclosure is generally known by the public and any competitors of either Party.	16.7	Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by first class or registered post or express or air mail or facsimile or by electronic means to a party at the address or relevant telecommunications number for such Party as the Party may from time to time designate by written notice to the other.
14.2		The Supplier shall not at any time use any Confidential Information concerning business or interests of Advance Sourcing or any of its customers, subsidiaries or associated companies other than in the course of its duties under this Agreement. Except to the extent that this Agreement may otherwise provide, all items and information supplied by Advance Sourcing to the Supplier shall remain the property of Advance Sourcing.	16.8	Any notice or other document shall be deemed to have been received by the addressee 2 business days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or is given by facsimile or by electronic means, simultaneously with the delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.
14.3		The obligations of the Parties under this clause 14 shall survive the expiry or the termination of this Agreement for whatever reason for a period of 2 years thereafter.	16.9	The Parties agree that all rights (express or implied) afforded to any third party by the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement and each Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
15		TERMINATION OF THIS AGREEMENT	16.10	This Agreement and each Contract entered into under it shall be governed by and construed in accordance with the laws of England and Wales. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement and/or any Contract and any proceedings in respect of any such claim or matter may be brought in such courts.
15.1		Either Party may at any time by notice in writing to the other Party terminate this Agreement by not less than one month's prior notice.		
15.2		Without prejudice to any other rights to which it might be entitled, Advance Sourcing may give written notice to the Supplier to terminate this Agreement or any Contract with immediate effect if:		
	(a)	the Supplier commits a material or persistent breach of this Agreement or a Contract and, if such breach is capable of remedy, fails to remedy such breach within 30 days of being notified of the breach;		
	(b)	the Supplier convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the		