

1. Definitions

Agreement means (i) a Confirmed Order or (ii) an agreement between Supplier and Buyer for the sale and purchase of Supplies pursuant to which Orders may be placed and to which these Conditions are attached or in which these Conditions are otherwise referenced. Each Confirmed Order, including any Confirmed Orders placed under the aforementioned agreement for sale and purchase, as applicable, shall form a separate Agreement;

Buyer means the company, partnership or person placing an Order for Supplies;

Confirmed Order means an Order which has been accepted or is deemed accepted by Supplier in accordance with Conditions 2.1 and 3.3;

Order means an Order which has been accepted by Supplier;

Delivery means delivery of Supplies in accordance with Condition 8.1.1.

Delivery Point means the unloading point at the address stated in the Agreement or such other address as is agreed between the parties in writing;

Event of Force Majeure means any circumstances beyond the control of a party including, but not limited to, acts of God, governmental actions, strikes or other labour disputes, lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, adverse weather conditions, epidemic, fire, reduction in or unavailability of power, breakdown, stoppage, slow working or reduced efficiency of plant or machinery, restraints or delays affecting carriers, shortage or unavailability of raw materials from normal sources of supply;

Insolvency Event means circumstances in which a party is unable to pay its debts, becomes insolvent or enters into liquidation or receivership, or suffers any event analogous to any of the above;

IP Rights means patents, rights to inventions, trademarks, rights in confidential information (including, without limitation, know-how and trade secrets), copyright, design rights and all similar or related intellectual property rights existing anywhere in the world, whether registered or not and including, without limitation, any applications for the same;

Loss means any loss, claim, liability, expense or damage suffered or payable whether arising directly or indirectly;

Order means Buyer's order or any other written instruction placed by Buyer for Supplies;

Supplier Affiliates means Associated British Foods plc ("ABF") and any subsidiary of ABF, from time to time, and "subsidiary" shall have the meaning given in s.1159 of the Companies Act 2006;

Supplies means goods (or any instalment or part of them), together with any ancillary services, to be supplied under the Agreement; and

VAT means value added sales tax payable in the UK or any similar sales tax.

2. Application of these Conditions

2.1. These Conditions are the only terms and conditions upon which Supplier is prepared to deal with Buyer and they shall govern, and are incorporated into, the Agreement and any other agreement and/or Order relating to the sale and purchase of Supplies. They apply to the exclusion of and prevail over all other terms and conditions which Buyer may purport to apply, impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Orders

3.1. Each Order shall be deemed to be an offer by Buyer to purchase Supplies and is subject to acceptance by Supplier. Buyer is responsible for ensuring the accuracy and completeness of any Order.

3.2. Any quotation by Supplier does not constitute an offer and Supplier reserves the right to withdraw or revise a quotation at any time prior to Supplier's acceptance of Buyer's Order.

3.3. No Order shall become a Confirmed Order unless and until:

3.3.1. Supplier has accepted such Order in writing; or

3.3.2. Supplier has dispatched the Supplies for Delivery or made the Supplies available for collection.

3.4. Buyer may not cancel any Confirmed Order except with the prior written agreement of Supplier.

3.5. Supplier shall have the right to cancel a Confirmed Order at any time at its discretion in the event that Supplier is not satisfied with the outcome of its compliance checks in respect of the Buyer.

4. Prices

4.1. Unless otherwise agreed in writing, the price payable for the Supplies shall be:

4.1.1. as set out in the Confirmed Order or as otherwise agreed in writing;

4.1.2. inclusive of costs relating to packaging, loading, unloading, carriage, insurance, transport. Supplier may charge Buyer for the additional cost of returnable containers and bags but full credit will be given to Buyer if returned undamaged; and

4.1.3. exclusive of VAT and any other taxes and duties that are payable in respect of the Supplies, which Buyer shall be liable to pay to Supplier.

4.2. Notwithstanding Condition 4.1, Supplier reserves the right, at any time before Delivery of Supplies, to increase the price of such Supplies in order to account for increases in Supplier's costs to produce and/or supply Supplies, including without limitation any

increased costs of raw materials, utility costs, transportation costs, exchange rate fluctuations and any other cost increases. Supplier shall inform Buyer of any such price increases prior to delivery of the relevant Supplies.

5. Additional costs

5.1. Buyer shall indemnify Supplier in respect of any Loss incurred by Supplier as a result of:

5.1.1. Buyer's instructions or lack thereof;

5.1.2. any failure or delay by Buyer in taking or accepting Delivery of Supplies; or

5.1.3. infringement or alleged infringement of any third-party IP Rights where Supplies are made to any specific instructions, specifications or other materials provided by Buyer.

6. Terms of payment

6.1. Unless otherwise agreed in writing:

6.1.1. Supplier shall be entitled to invoice Buyer for the price of the Supplies at any time following acceptance or deemed acceptance of the Order.

6.1.2. Buyer will pay for Supplies in £ Sterling in accordance with any payment terms agreed between the parties in writing and otherwise within the number of days for payment stipulated on the relevant invoice. Time for payment will be of the essence.

6.2. Buyer shall make all payments due under the Agreement in full to Supplier's account as notified to Buyer without any deduction, whether by way of set-off or otherwise.

6.3. If Buyer fails to make any payment on the due date (or exceeds the limit on any payment account agreed with Supplier), then without prejudice to any other right or remedy available, Supplier shall be entitled to:

6.3.1. suspend further deliveries of Supplies (as well as other supplies under any other agreement) until Buyer has paid the overdue amount in full; and

6.3.2. charge interest on any overdue amount at a rate of 3% above the base rate, from time to time, of Barclay's Bank plc. Interest will accrue on a daily basis from the due date until payment is made.

7. Intellectual property

7.1. Subject to Condition 7.2:

7.1.1. neither party shall have, gain title to (nor have nor gain any licence to use or modify) the other party's IP Rights; and

7.1.2. neither party shall do or permit any act which may indicate that it has any right, title or interest in the other party's IP Rights.

7.2. Unless otherwise agreed in writing, all IP Rights in Supplies shall belong to Supplier.

8. Delivery and returns

8.1. Unless otherwise agreed in writing:

8.1.1. Supplies will be delivered DDP (Incoterms® 2020) at the Delivery Point;

8.1.2. where required, Buyer will provide access to the Delivery Point together with adequate equipment and labour for taking Delivery of Supplies.

8.2. Supplier shall use reasonable endeavours to meet Buyer's requested Delivery timings but reserves the right to vary such timings. Delivery dates and times are estimates and time of Delivery is not of the essence.

8.3. Supplies may not be returned without Supplier's prior written authorisation and, if authorised, the Supplies must be unused and returned (at Buyer's expense) in their original packaging and original condition to such address as Supplier directs. Once received and verified as meeting these requirements, Supplier will process any refund of charges already paid (if any) for those Supplies.

9. Passing of title and risk

9.1. Unless otherwise agreed in writing, risk in the Supplies shall pass to Buyer upon Delivery to the Delivery Point and title to Supplies shall only pass when Supplier has received full payment for the Supplies and for any other supplies that Supplier has supplied to Buyer.

9.2. Until title to Supplies has passed to Buyer, Buyer will:

9.2.1. safely store the Supplies, maintaining them in good condition;

9.2.2. ensure that the Supplies remain readily identifiable as Supplier's property and not remove, deface or obscure any identifying mark or packaging;

9.2.3. insure the Supplies against all risks for their full price from the date of Delivery;

9.2.4. give Supplier such information as it may reasonably require from time to time in relation to (i) the Supplies and (ii) the ongoing financial position of Buyer; and

9.2.5. notify Supplier as soon as possible if any of the events in Condition 12.1 occur.

9.3. Notwithstanding Condition 9.1 and 9.2, Buyer may resell Supplies in the ordinary course of its business. If it does so, legal and beneficial ownership of such Supplies will pass to Buyer immediately prior to the point at which resale by Buyer occurs. Such right to resell the Supplies shall terminate on written notice by Supplier and shall also automatically terminate or suspend on the termination or suspension of the Agreement. Where Supplier is unable to determine the location of any Supplies in respect of which Buyer's right to possession or Buyer's

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- right to resell has terminated, Buyer shall be deemed to have sold all Supplies (and other supplies) of the kind sold by Supplier to Buyer in the order in which they were paid for by Buyer.
- 9.4. Buyer grants to Supplier an irrevocable licence to enter premises where Supplies are stored on reasonable prior notice in order to inspect them or, if Supplier becomes entitled to terminate the Agreement in accordance with Condition 12, to recover them.
- 10. Warranties and representations**
- 10.1. Supplier warrants that at the time of despatch the Supplies will:
- 10.1.1. conform in all material respects with any specification in the Confirmed Order; and
- 10.1.2. comply with applicable statutory and regulatory requirements in the UK.
- 10.2. If any Supplies do not conform with the warranty given in Condition 10.1, Supplier shall, at its option, repair or replace the defective Supplies, or refund the price of the defective Supplies in full. This is conditional on:
- 10.2.1. Buyer giving written notice to Supplier of the alleged defect in the Supplies, such notice to be received by Supplier within three (3) days of the time when Buyer discovers the defect and in any event within three (3) months of Delivery of such Supplies;
- 10.2.2. Buyer affording Supplier a reasonable opportunity to inspect and/or examine the Supplies;
- 10.2.3. Buyer making no further use (including sale) of the Supplies after discovering the alleged defect, unless Supplier has given written authorisation to continued use;
- 10.2.4. the Supplies having been used and stored in accordance with the instructions issued by Supplier and otherwise in accordance with general trade practice;
- 10.2.5. the Supplies not having been altered by Buyer or any third party; and
- 10.2.6. the defect or non-compliance not arising as a result of Supplier following any requirement(s) or specifications of Buyer.
- 10.3. Except as provided in this Condition 10, Supplier shall have no liability to Buyer in respect of Supplier's failure to comply with the warranty set out in Condition 10.1.
- 10.4. The terms implied by sections 13 to 15 (inclusive) of the Sale of Goods Act 1979 (and any other implied terms which are capable of exclusion at law) are, to the fullest extent permitted by law, excluded from the Agreement.
- 11. Recall and/or withdrawal of Supplies**
- 11.1. Buyer will maintain up-to-date and accurate records to enable the prompt withdrawal or recall of Supplies from the market.
- 11.2. Each party shall notify the other immediately upon becoming aware of any court order or other directive of a governmental or regulatory authority to withdraw or recall Supplies from the market ("**Recall Notice**").
- 11.3. Buyer will notify Supplier of any circumstances which indicate that Supplies that are available for sale in the market are defective, faulty, unsafe or otherwise non-compliant with applicable law ("**Defect Notice**").
- 11.4. Buyer will reasonably cooperate with, and assist Supplier in relation to any Recall Notice and/or Defect Notice and/or in relation to any other circumstances where Supplier has notified Buyer that it wishes to withdraw or recall Supplies from the market, including, without limitation:
- 11.4.1. following Supplier's instructions concerning the withdrawal and/or recall of Supplies from the market;
- 11.4.2. providing Supplier with such information that it reasonably requires in connection with the Supplies to which the recall or withdrawal relates; and
- 11.4.3. issuing to Buyer's customers any notifications from Supplier that relate to the manner of use, operation or safety of the Supplies.
- 11.5. Subject to applicable law, Buyer will not:
- 11.5.1. carry out a recall or withdrawal of any Supplies without Supplier's prior written consent, failing which any such recall or withdrawal undertaken without Supplier's consent shall be at Buyer's own risk; or
- 11.5.2. publicise, share or issue any information, correspondence, communications or other materials relating to the recall or withdrawal.
- 12. Termination or cancellation**
- 12.1. Supplier may terminate the Agreement or suspend performance under it (and/or terminate or suspend performance under any other agreement for supplies) with immediate effect and without liability by giving written notice to Buyer if:
- 12.1.1. Buyer commits a material breach of any term of the Agreement and (if such breach is remediable) Buyer fails to remedy that breach within fourteen (14) days of being notified to do so;
- 12.1.2. Buyer fails to pay any amount when properly due under the Agreement; or
- 12.1.3. Buyer suffers an Insolvency Event.
- 12.2. Buyer shall not be entitled to cancel or terminate any Agreement, whether by reason of any act, omission or default on the part of Supplier or otherwise, and its rights to do so (including any rights to do so at common law) are excluded.
- 12.3. On termination of the Agreement for any reason, all outstanding amounts under the Agreement will become due and payable by Buyer from the date of termination.
- 12.4. Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive the termination of the Agreement shall continue in full force and effect.
- 13. Limitation of liability**
- 13.1. The following provisions set out the entire financial liability of Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of: (a) any breach of the Agreement; including wilful breach; (b) any claim in connection with the Supplies, their supply by Supplier, or their use or resale by the Buyer; or (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 13.2. Nothing in these Conditions excludes or limits the liability of Supplier: (a) for human death or human personal injury caused by Supplier's negligence; or (b) for any matter which it would be illegal for Supplier to exclude or attempt to exclude its liability or which otherwise cannot be excluded at law; or (c) for fraud or fraudulent misrepresentation.
- 13.3. Subject to Condition 13.2 above Supplier's total aggregate liability (including costs and interest), in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement, shall be limited as follows: (a) in respect of any claim for physical damage to property arising from or in connection with the performance or contemplated performance of the Agreement, Supplier's total liability (including costs and interest) shall be limited to the higher of: (i) the total of all sums paid or payable by Buyer to Supplier under the Agreement in any twelve month period ending on the date that the relevant claim arises (the "**Liability Year**"); and (ii) £1,000,000; Supplier shall be entitled to set-off from the limitation cap in (i) or (ii) the amount of any other Property Claim arising in that Liability Year for which Supplier is liable which shall have the effect of reducing the limits at (i) and (ii) accordingly; and (b) in respect of all claims other than those covered by sub-clause (a), shall be limited to the price paid or payable for the Supplies under the relevant Agreement.
- 13.4. Subject to Condition 13.2, Supplier shall not be liable for any pure economic loss, loss of profit, loss of anticipated savings or cost reductions, loss of business, depletion of goodwill (in each case whether direct or indirect) or for any indirect or consequential loss whatsoever and howsoever caused which arise out of or in connection with the Agreement.
- 13.5. If any of the Supplies are manufactured by a third party, Buyer is responsible for complying with all manufacturer's recommendations regarding the use of the Supplies and, if in doubt, must contact that manufacturer. Supplier accepts no liability for any Loss arising from a failure by Buyer to follow the manufacturer's recommendations.
- 14. Force majeure**
- 14.1. Save for Buyer's obligation to pay for Supplies, neither party shall be liable under the Agreement for any delays or failures in performance of the Agreement which result from an Event of Force Majeure. The party subject to an Event of Force Majeure shall notify the other party in writing when such event causes any such delay or failure. The time for performance of an obligation which is affected by an Event of Force Majeure shall be extended by such period that reflects the delay caused by the Event of Force Majeure. If the Event of Force Majeure continues for more than thirty (30) days, either party may terminate the Agreement by giving written notice to other.
- 15. Miscellaneous**
- 15.1. Supplier reserves the right (at its ultimate discretion) to undertake internal compliance checks on the Buyer prior to dispatching the Supplies for Delivery or making the Supplies available for collection, and on an ongoing basis throughout the duration of the Agreement.
- 15.2. A waiver of any right or remedy under the Agreement is only effective if granted in writing, and if so granted shall not be deemed a waiver of any subsequent or other breach or default.
- 15.3. These Conditions may be updated by Supplier by notice in writing from time to time. Any such updates shall apply to any Orders placed after such update. Subject to the foregoing, no variation to these Conditions shall be valid or effective unless it is made in writing, refers to these Conditions and is duly signed or executed by, or on behalf of, each party.
- 15.4. The parties shall comply with applicable laws, including all economic and/or trade sanctions laws, regulations and any other binding measures of the UK, European Union, the United Nations, the United States of America or any other jurisdiction applicable to the parties.
- 15.5. Each party acknowledges that it may have access to confidential information relating to the business or affairs of the other party. Each party specifically agrees that it will keep confidential and will not use for any purpose other than the performance of (or the exercise of rights

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- in respect of) the Agreement (as applicable), and will not, subject to Condition 15.6 and 15.7, without the prior written consent of the other, disclose, directly or indirectly, to any third party, any such confidential information.
- 15.6. Supplier may disclose confidential information received from Buyer to Supplier Affiliates, relevant service providers and professional advisors, under conditions of confidentiality.
- 15.7. Nothing prevents use or disclosure by either party of information which is already in the public domain (other than due to default of such party) or which such party acquires independently of the other party and without restriction on disclosure or use or prevents disclosure to the extent required by law or regulation.
- 15.8. If any provision of the Agreement is held to be invalid or unenforceable it shall, to the extent of such invalidity or unenforceability be deemed severable and the remaining provisions, and the remainder of such provision, shall continue in full force and effect.
- 15.9. Supplier may assign the Agreement or sub-contract the whole or any part thereof. Buyer shall not attempt to assign, transfer, charge or otherwise deal with its rights or obligations under the Agreement without the prior written consent of Supplier.
- 15.10. The rights and remedies of Supplier under these Conditions shall be cumulative, and no right or remedy of Supplier set out in these Conditions shall be deemed to be in lieu of any other right or remedy.
- 15.11. Any notice required or permitted to be given by either party to the other shall be in writing addressed to the other party at its registered office or principal place of business. Notice (save for commencement of proceedings) may also be sent by email, to an approved e-mail address recipient (as notified by the recipient party in writing), provided that no failed delivery or out of office message is received.
- 15.12. Nothing in the Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of one party shall be deemed to be or become an employee of the other party.
- 15.13. The Agreement will not be enforceable by any person other than Buyer and Supplier.
- 15.14. The Agreement contains the whole agreement between the parties in respect of the applicable subject matter and shall supersede all prior written or oral agreements, arrangements and understandings between the parties relating to such subject matter.
- 15.15. The Agreement and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, shall in all respects be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.