

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, the following definitions apply:

- Brexit** means the UK ceasing to be a member state of the European Union;
- Brexit Impact Event** means any of the following events if directly caused by Brexit:
 - a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
 - b) **Trade tariff:** in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or provision of the Services across borders;
 - c) **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by the customer to purchase or use the Goods and/or Services;
 - d) **Currency Fluctuation:** where the price for the Goods and/or Services has been agreed in Euro, a change of more than 5% to the rate of exchange of sterling against the Euro, since the date of the Order. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
 - e) **Shortages:** shortages of ingredients, components, materials or labour;
 - f) **Other change:** an unforeseeable change (at the date of the relevant Contract) to the business or economic environment in which the Customer operates which is not caused by a) to e) above.

Change of Control: has the meaning set out in s1124 of the Corporation Tax Act 2010;

Conditions: means these terms and conditions for the purchase of Goods and/or Services;

Confidential Information: means the existence and terms of any Order, Specification or Contract and any and all information (whether recorded or supplied in permanent or transitory form) which has been, is now or at any time after the date of these Conditions is disclosed to or made available by the Customer to: the Supplier or its Employees; or (where applicable) to any company within the Supplier's Group; or to any other person at the request of the Supplier as recipient; or any information of which the Supplier becomes aware or which comes into the Supplier's control or knowledge as a result of entering into these Conditions or of providing the Services which is of a technical, commercial or financial nature (including software in various stages of development in human or machine readable form, research information, methodologies, knowledge data, know-how, formulae, processes, designs, drawings, specifications, models, diagrams, flow charts, marketing and development plans, business plans, intellectual property rights, customer information, customer lists, actual or prospective sale contracts, photographs and samples) and which relates to the Customer or the Customer's business or that of its Group or to any of the Customer's end customers or their business or that of its Group but shall not include information which:

- (a) is accessible from public sources or is or becomes generally available to third parties (other than as a result of disclosures by the Supplier, by the Employees or by any company within the Supplier's Group, of such information in breach of these Conditions; and/or
- (b) either party can establish to the reasonable satisfaction of the other party that the information was known to the Supplier before the date of these Conditions and that it was not under any obligation of confidence in respect of the relevant information; and/or
- (c) becomes lawfully available to the recipient from a source other than the Customer or the end customer, which source is not bound by any obligation of confidentiality to another party in relation to such information; and/or
- (d) was required to be disclosed by law or by the rules or directions of any court or any authority;

Contract: means as the context requires, the legally binding agreement between the Customer and the Supplier made up of either:

- (a) in a tender situation – the Order, these Conditions, and any Specification; or
- (b) in a non-tender situation – the Order, these Conditions, any Specification and the Supplier's acceptance of the Order whether made in writing (subject always to Conditions 2.1 and 2.4) or through delivering the Goods and/or providing the Services, whichever occurs first; or
- (c) any written agreement between the Customer and the Supplier that incorporates these Conditions within a Schedule to such written agreement

Control has the meaning given to it in Section 1124 of the Corporation Tax Act 2010;

Customer: Sofina Foods Limited (registered number 10664871), whose registered office is at Norton Grove Industrial Estate, Hugden Way, Norton, Malton YO17 9NE or, as applicable any other member of the Sofina Foods Group (including but not limited to Karro Food Limited and/or Young's Seafood Limited) which has issued the purchase order form or accepted Supplier's quotation in writing, as the case may be, for the Goods and/or Services;

Customer Representative: means the Customer's representative named in the Order who will be first point of contact in relation to the Services, or in the absence of any specified person, the Customer's procurement manager;

Data Protection Legislation: means the UK Data Protection Legislation and any

other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

DDP: means the provisions of the Incoterm 'Delivered Duly Paid' as set out in Incoterms 2020, which are incorporated into these Conditions as varied under them and in particular by Condition 5;

Delivery Point: means the locations/addresses specified for delivery of the Goods and/or Services in the Order;

Due Date: means the fixed date(s) for delivery set out in the Order;

Employees: means the staff used by the Supplier to carry out its obligations and/or deliver the Services under the Contract;

Good Industry Practice: means the exercise of that degree of skill, diligence, prudence and foresight which, as at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced provider of the Services seeking in good faith to comply with its contractual obligations to a high standard, and complying with all applicable laws and codes of practice in the same type of undertaking and under the same or similar circumstances and observations;

Goods: means any goods or materials to be supplied to the Customer that are specified and/or described in the Order;

Group: in relation to a party, means any subsidiary and/or holding company of that party and any subsidiary of any such subsidiary and/or holding company from time to time;

Impact Event: means a Brexit Impact Event or a Pandemic Impact Event;

Incoterms 2020: means the 2020 edition of the International Chamber of Commerce official rules for the interpretation of trade terms (ISBN 978-92-842-0510-3);

Intellectual Property Rights: means all patents, trade marks, service marks, registered designs or any applications for any of the foregoing, copyright (including in any text, computer coding, algorithms, applets, or in any other constituent elements of the Outputs), design right, database rights, topographical rights, unregistered trade marks or other intellectual or industrial property rights, look and feel in any graphical user interface in the Outputs, and all know-how whether subsisting in the United Kingdom or anywhere else in the world;

Month: means a calendar month.

NDA: means the Customer's standard non-disclosure agreement from time to time in the form provided to the Supplier.

Order: means the Customer's instruction to the Supplier to purchase the Goods and/or Services, whether in a formal purchase order or otherwise, and/or which may in appropriate circumstances be set out in a tender letter and related tender documentation, and which shall in all circumstances incorporate these Conditions.

Outputs: means all research, designs, records, reports, documents, papers, drawings diagrams, discs, transparencies, photos, graphics, logos, text, typographical arrangements, coding, software, formulas, samples, prototypes and all other materials or items in whatever form, including but not limited to physical items, hard copies and electronic forms, prepared and/or produced by the Supplier in the provision of the Services and any other material to the extent that it reproduces, contains, embodies, or is made according to, the Customer's Confidential Information.

Pandemic: means the spread of any virus or disease affecting humans (including but not limited to Covid-19 or any variety of Covid or SARS) which results in governmental restrictions on the movement of persons or Goods or upon trade in any way (whether or not formally declared by any relevant governmental body as a pandemic (including but not limited to any part of the UK Government and/or the World Health Organisation);

Pandemic Impact Event: means any of the following events if directly caused by a Pandemic:

- (a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, Law means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- (b) **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by the customer to purchase or use the Goods and/or Services;
- (c) **Border Closures and Import / Export Restrictions:** any restriction on the movement of Goods or provision of Services and/or movement of people in and out of the United Kingdom to and from third countries;
- (d) **Restrictions on Movement:** any restriction on the free movement of people within a geographical territory, including but not limited to, quarantine, self-isolation or compulsory isolation.
- (e) **Shortages:** shortages of ingredients, components, materials or labour;
- (f) **Other change:** an unforeseeable change (at the date of the relevant Contract) to the business or economic environment in which the Customer operates which is not caused by a) to e) above.

Parent Company Guarantee: means a performance guarantee issued by the holding company of the Supplier in the form required in the Order.



- Performance Bond:** means a bank performance bond in the form required in the Order issued by a bank or insurance company first approved by the Customer for a sum equal to that required in the Order.
- Services:** means those services specified to be provided by the Supplier in the Order that relates to the Services;
- Sofina Foods Group:** means any company registered in England and Wales; Scotland; or the Republic of Ireland, which is under the direct or indirect Control of Sofina Foods Limited (Co No 10664871) from time to time; including but not limited to: Karro Food Group Limited; Karro Food Limited; Karro ICT Services Limited; Karro Food Frozen Limited; Karro Food Stoke Limited; Karro McGees (ROI) Limited; FJG Logistics Limited; T S Bloor & Sons Limited; Carroll Cuisine Unlimited Company; Callan Bacon Company Limited; M&M Walshe Limited; Stirchley Bacon Co. Limited; and Young's Seafood Limited.
- Specification:** means any agreed specification and/or timetable and/or schedule of works against which the Supplier has given a quotation for the supply of Goods and/or Services, or which is attached to or incorporated in the Order that relates to the Goods and/or the Services, and in relation to meat purchased the specification may be made by reference to the appropriate UK Agriculture and Horticulture Development Board (AHDB) meat specifications and/or categories;
- Supplier:** means the company or individual supplying the Goods or Services;
- UK Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.2 Reference to any statute or statutory provisions shall include any subordinate legislation made under it, and any subsequent legislation that adds to or replaces it.
- 1.3 The descriptive headings to clauses, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.
- 1.4 Words importing the singular include the plural and vice versa, words importing a gender include every gender and reference to persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons.
- 1.5 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.6 Any reference to a "day" shall mean a period of 24 hours running from midnight to midnight, reference to a "working day" shall mean Monday to Friday inclusive but excluding bank holidays and references to times of the day are to London (UK) time on the applicable date.
- 1.7 All references to the Customer in these Conditions shall include each company in the Sofina Foods Group and all members of the Customer's Group who, subject always to Condition 23, shall be entitled to use and rely upon these Conditions.

2. BASIS OF PURCHASE

- 2.1 Subject to any written agreement that has been signed by duly authorised representatives of each of the parties (a **Bespoke Contract**), these Conditions are the only basis upon which the Customer is prepared to deal with the Supplier and, they shall govern the Contract between the Customer and the Supplier to the entire exclusion of all other terms or conditions. These Conditions apply to all of Customer's purchases of the Goods and/or the Services from the Supplier under the Contract. To the extent that these Conditions supplement and expand upon the terms of any Bespoke Contract (for example, including but not limited to, in relation to the impact of Brexit and/or a Pandemic) they shall to such extent be binding upon the parties in relation to business for Goods and/or Services transacted after 15 December 2021, and shall not be held to conflict with such Bespoke Contract.
- 2.2 Each Order for Goods and/or Services by the Customer shall be deemed to be an offer by the Customer to purchase the Goods and/or Services, subject to these Conditions, which shall be accepted when the first of the following occurs:
- 2.2.1 the Supplier issues any written documentation (including by email) expressly or impliedly accepting the Order (including by offering to proceed with the supply of the Goods or Services after receipt of the Order); or issues any invoice relating to any part of the Order (subject in each case to Condition 2.4); or
- 2.2.2 the Supplier accepts the Order verbally expressly or impliedly (including by offering to proceed with the supply of the Goods or Services after receipt of the Order); or
- 2.2.3 the Supplier accepts the Order through conduct by taking any steps towards delivery of the Goods and/or Services (whether by commencing manufacture and/or supply of the Goods or performance of the Services or otherwise); or
- 2.2.4 the Supplier delivers the Goods and/or Services to the Customer.
- 2.3 Once the Supplier accepts any Order in accordance with Condition 2.2, any Specification relating to that Order shall become a binding condition on the Supplier.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of Order, invoice or any other document will form part of the Contract and the Supplier hereby waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5 No variation to these Conditions shall be binding unless agreed in writing by the duly authorised representative of the Customer.
3. **SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier warrants to the Customer that upon delivery and for a period of 18 months thereafter, all Goods it supplies:
- 3.1.1 are and shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 3.1.2 are and shall be fit for purpose within the meaning of the Sale of Goods Act 1979;
- 3.1.3 shall comply fully and in all respects with the terms of any Specification including any specified quality, grade, technical and/or functional specification.
- 3.2 Without prejudice to any other remedy that the Customer may have under these Conditions or otherwise, in the event of a breach by the Supplier of any of the warranties under Condition 3.1, the Supplier shall, at its own cost and at the Customer's sole discretion, upon request promptly and in any event within five working days:
- 3.2.1 replace the Goods that are not compliant with any of the warranties with new Goods that are fully compliant; or
- 3.2.2 repair the Goods to ensure that they are fully compliant with all of the warranties; or
- 3.2.3 remove the Goods that are no longer compliant with all of the warranties and make a full refund to the Customer of all monies paid to the Supplier in relation to such removed Goods, and all the Goods repaired or replaced under this Condition 3.2, if they subsequently fail any of the warranties shall be subject to the remedies of this Condition 3.2.
- 3.3 The Supplier warrants and represents that in respect of all Services which it provides to the Customer, it shall:
- 3.3.1 fulfil its obligations under these Conditions in a conscientious manner and shall deal with the Customer in good faith;
- 3.3.2 maintain the capacity and expertise to provide the Services to the Customer and shall provide the Services through experienced, qualified and trained personnel acting with all due skill, care and diligence;
- 3.3.3 discharge its obligations under these Conditions with all due skill, care, and diligence including Good Industry Practice (prevailing as at the relevant time) and in accordance with its own established internal procedures;
- 3.3.4 commit all such resources as are reasonably necessary to ensure that the Services are provided in accordance with the provisions of the Order and any Specification, and in particular but without limitation that:
- (a) it shall provide appropriate and adequate numbers of Employees who will dedicate sufficient time and energy to ensure that the Services are provided in a timely and efficient manner and in compliance with the agreed Specification; and
- (b) where any staffing or skill levels are specified in the Specification that it shall ensure that those levels are maintained so as to ensure timely delivery;
- 3.3.5 in carrying out the Services, comply (and will procure that its staff shall comply) with the Customer's reasonable instructions in relation to, without limitation, such matters as to the priority to be given to each element of the Services and co-ordination with the Customer's operational requirements;
- 3.3.6 comply with all relevant environmental legislation and shall produce to the Customer promptly upon request evidence of such compliance in carrying out the Services.
- 3.4 During the term of the Contract, the Supplier shall (without prejudice to the other obligations of the Supplier under these Conditions):
- 3.4.1 at all times ensure, to the reasonable satisfaction of the Customer, the proper performance of the Services by the Supplier (whether by the Employees or otherwise) in accordance with the Specification, and comply with all reasonable requirements as to best practice stipulated by the Customer from time to time as to the performance of the Services or the manner in which the Services are provided;
- 3.4.2 report to the Customer on the provision and performance of the Services as reasonably required by the Customer;
- 3.4.3 in performing its obligations under the Contract, comply with all relevant statutory requirements and regulations and all codes of conduct (whether voluntary or otherwise) in force at the time of performance of such obligations;
- 3.4.4 when appropriate make suggestions to the Customer regarding enhancements to the provision of the Services;
- 3.4.5 where Goods or Services are to be delivered at a third party's premises (for example, at the premises of a customer of the Customer), liaise with such third party in respect of delivery a reasonable time before the Due Date and, as far as reasonably practicable, take into account such third party's requirements in so far as they do not conflict with the applicable Specification and the terms of the Contract;
- 3.4.6 deal with any complaints or enquiries received from the Customer or Customer's own customers (whether received orally or in writing) in a prompt, courteous and efficient manner. All such complaints and enquiries shall be logged by the Supplier and discussed between the parties as appropriate. If any serious complaints are made, the Supplier shall notify the Customer and co-operate with the Customer to resolve any problems which arise;
- 3.4.7 not do anything which would be likely to prejudice the reputation of the Customer;
- 3.4.8 ensure that all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and will at all times comply with all applicable Legislation (including, without limitation, in respect of food safety, hygiene and animal welfare) in respect of the manufacture, production, labelling, packaging, storage, handling and delivery



- of the Goods.
- 3.5** The Customer may from time to time modify any Specification by way of minor variations of an insignificant nature. The Customer shall provide reasonable prior written notice of any such variation of the Specification to the Supplier.
- 3.6** The Customer may, during the term of these Conditions and within 3 months of termination of the Contract, request any information relating to the carrying out of all or any part of the Services and/or in relation to the Goods, and such information shall be supplied by the Supplier as soon as reasonably possible and at no cost to the Customer.
- 4. BRIBERY AND CORRUPTION PREVENTION MEASURES**
- 4.1** The Supplier warrants and undertakes to the Customer that in connection with the Contract it shall, and it shall procure that all Employees shall:
- 4.1.1** comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 4.1.2** comply with the Customer's anti-bribery and anti-corruption policies in force from time to time, a copy of which shall be provided to the Supplier and to any Employees upon written request;
- 4.1.3** maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
- 4.1.4** notify the Customer as soon as practicable of any breach of any of the undertakings contained within this Condition of which it becomes aware.
- 4.2** The Supplier shall, upon request by the Customer from time to time, promptly confirm in writing that it has complied with its undertakings under Condition 4.1, and shall promptly and fully provide any information reasonably requested by the Customer in support of such compliance;
- 4.3** For the avoidance of doubt, any breach by the Supplier of this Condition 4 shall be deemed to be a breach of the Contract which is not capable of remedy for the purposes of Condition 10.1.9.
- 5. DELIVERY OF GOODS OR SERVICES**
- 5.1** The Supplier hereby acknowledges and accepts that timely delivery and continuity of supply of the Goods or Services is of fundamental and critical importance to the Customer, and that the Customer has contractual obligations with its own customers in connection with the Goods and/or Services.
- 5.2** Time for delivery of all Goods and/or Services shall be of the essence and it shall be a condition that the Supplier shall deliver the Goods or Services at the specified Delivery Point by the relevant Due Dates specified in the relevant Orders.
- 5.3** Unless otherwise specified in the Order, it shall be a condition that the Supplier shall deliver the Goods DDP as varied by this Condition 5 to the Delivery Point specified in the Order. Title to the Goods shall pass to the Customer upon physical delivery to the Delivery Point specified in the Order. Risk in the Goods shall transfer upon acceptance by the Customer after physical delivery, unless the Goods are also being installed by Supplier, whereupon risk shall transfer upon successful installation instead.
- 5.4** If the Goods need to be stored at any point before the Customer can take acceptance, the Supplier shall store the Goods and shall bear the cost and risk of such storage. Title and risk in the Goods shall transfer as specified in Condition 5.3.
- 5.5** Where the Goods are to be installed by the Supplier, the Supplier agrees that the Customer may nominate or appoint third party specialists on the Supplier's behalf to move the Goods from the Delivery Point to the point of installation, and that risk in the Goods shall only transfer to the Customer on successful installation of the Goods.
- 5.6** Title in any rejected Goods shall revert to the Supplier only upon the Supplier's collection of such rejected Goods from Delivery Point and the full refund by the Supplier of any monies paid by the Customer in relation to such rejected Goods. Physical delivery for the purpose of this Condition 5.6 shall include completing the unloading of the Goods at the Delivery Point at the sole risk of the Supplier, which for the avoidance of doubt may include internal locations where so specified in the Order.
- 5.7** The Supplier shall ensure that:
- 5.7.1** upon dispatch of each consignment of the Goods, it shall send a dispatch note to the Customer by email to the email address shown in the Specification, which shall include the means of transport, weight, number and volume of Goods, dispatch date and time, and anticipated delivery date and time at the Delivery Point; and
- 5.7.2** each delivery of Goods is accompanied by a delivery note which shows, amongst other things, the order number, date of order, description of the Goods and in the case of part delivery, the outstanding balance remaining to be delivered; and
- 5.7.3** (without prejudice to any statutory obligations on the Supplier) upon delivery, all Goods and their packaging shall contain suitable prominent handling and hazard warning levels in relation to all likely hazards arising from despatching, receiving, handling, using, storing or possessing the Goods, and were it is not practicable for such details to be provided in full on such labelling, they shall be provided in accompanying supplementary literature.
- 5.8** Where the Customer agrees in any Order to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Failure by the Supplier to deliver any one instalment in accordance with the provisions of Conditions 5.2 to 5.6 shall entitle the Customer at its option to treat the whole Contract as repudiated.
- 5.9** If the Services or any part of them are not performed by the relevant Due Date and/or in accordance with the Specification, and/or if the Goods or any part of them

are not delivered by the relevant Due Date (or Due Dates in the case of Goods and/or Services delivered in instalments) and/or in accordance with the Specification (subject to the Supplier having been given the opportunity to promptly carry out remedial steps under Condition 6) then, without prejudice to any other remedy that it may have, and without granting a waiver of the Supplier's breach of these Conditions, the Customer may at its sole discretion:

- 5.9.1** procure the provision of any particular Goods and/or Services or any parts thereof which the Supplier has failed to successfully deliver, from a third party at the Supplier's cost, the additional costs to the Customer of which the Supplier agrees to reimburse to the Customer promptly upon demand; and/or
- 5.9.2** where the Supplier requests an extension of time on the Due Date and in the Customer's opinion are realistically capable of achieving delivery on the extended Due Date, opt to give the Supplier an extension of time for the relevant Due Date in return for a discount on the agreed price for such Goods and/or Services, which in the absence of written agreement to the contrary in the Order or elsewhere, shall be a discount of 5% of the original delivery price for each additional Month granted; and/or
- 5.9.3** terminate the Contract and receive a full refund of any instalments of the price paid to the Supplier for such Goods and/or Services (subject to making all non-compliant Goods actually delivered available for removal by the Supplier at the Supplier's own cost).
- 6. PRE-DESPATCH TESTING, POST-DELIVERY ACCEPTANCE OF GOODS AND AUDIT**
- 6.1** Before despatching the Goods, the Supplier shall inspect and test them for compliance with the Specification and/or the Contract. The Supplier shall, if requested by the Customer, give the Customer reasonable notice of such inspections and tests and the Customer shall be entitled to be represented thereat. The Supplier shall at its own cost also supply to the Customer certificates of the results of inspections and tests in such form as the Customer may require.
- 6.2** The Customer shall be entitled at any reasonable time, at its sole discretion, to inspect and test the Goods during manufacture, processing or storage, and the Supplier shall at its own cost provide or procure the provision of all facilities as may reasonably be required by the Customer in respect thereof.
- 6.3** If as a result of any inspection or test under Condition 6.1 or 6.2 above, the Customer is of the opinion that the Goods do not or are unlikely on completion of manufacture or processing to comply with the Specification and/or the Contract, the Customer may notify the Supplier, and the Supplier shall promptly take at its own expense all steps as may be necessary to ensure full compliance of the Goods with the Specification and/or the Contract upon the delivery on the Due Date.
- 6.4** The provisions of Conditions 6.1, 6.2 and 6.3 above are without prejudice to any other rights or remedies that the Customer may have in relation to the Goods, whether under the Contract or otherwise.
- 6.5** Following physical delivery of any Goods, the Customer shall inspect the Goods within a reasonable period of time. In the event that there is any fault with the Goods or that they fail to comply with the Specification and/or the warranties given by the Supplier in Condition 3.1, the Customer shall notify the Supplier who shall promptly remedy this at its own cost, and at the Customer's sole discretion, by either:
- 6.5.1** delivering the correct quantity of non-faulty and/or compliant replacement Goods and removing any faulty and/or not compliant Goods which the Customer rejects; or
- 6.5.2** attending at the Delivery Point and carrying out any necessary remedial work to ensure that the Goods and/or the Supplier's complete and satisfactory delivery of the Services; or
- 6.5.3** giving the Customer a discount (agreed with the Supplier at the time by reference to the quality of the relevant Goods) in relation to the faulty or out of Specification Goods; or.
- 6.6** Unless otherwise specified in the Order, the Supplier shall only invoice the Customer following the Customer's acceptance of the Goods and/or the Supplier's complete and satisfactory delivery of the Services.
- 6.7** Without prejudice to any other rights and/or remedies that the Customer may have, in the event that the Supplier delivers items other than the Goods to the Customer, the Supplier shall promptly remove all such items at its own cost, and if it has not done so within 48 hours of the Customer requesting it to do so, the Customer may dispose of all such items as it sees fit, including treating them as waste, and may recharge the costs of such disposal to the Supplier.
- 6.8** The Customer shall not be obliged to return to the Supplier any pallets, packaging, or packing materials for the Goods, whether or not any Goods are accepted by the Customer.
- 6.9** The Supplier acknowledges that the Customer is a supplier to many supermarkets and other retailers and it is a condition of the Contract that the Supplier shall allow the Customer and its customers and any auditors of or other advisers to the Customer or its customers, full audit access to its production premises, personnel and all records which relate to the provision of the Goods and/or Services to the Customer. The Customer or any auditor or advisor shall give the Supplier reasonable notice ahead of the intended visit which will take place during normal business hours.
- 6.10** The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 6.11** Subject to the Customer's obligations of confidentiality, the Supplier shall provide



- the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 6.12** The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under Conditions 6.9 - 6.13 inclusive.
- 6.13** If an audit identifies that the Supplier has failed to perform any of its obligations under this agreement then, without prejudice to the other rights and remedies of the Customer, the Supplier shall immediately take the necessary steps to comply with its obligations at no additional cost to the Customer;
- 7. PRICE AND PAYMENT**
- 7.1** The price payable by the Customer shall be the applicable price of the relevant Goods and/or Services set out in the relevant Order and unless otherwise agreed in writing by the Customer, and shall be exclusive of value added tax (if any).
- 7.2** Unless specified in the Order, all sums payable shall be calculated and paid in £ Sterling.
- 7.3** The Customer will accept no variation in the price or extra charges for the supply and delivery of the Goods and/or Services unless such variation to the price or such extra charges for the supply and delivery of the Goods and/or Services has been expressly agreed in advance and in writing by an authorised representative of the Customer (including, for the avoidance of doubt, increases in the costs of materials, labour, and/or transport costs, fluctuation in rates of exchange).
- 7.4** Unless other payment terms have been expressly agreed with the Supplier in writing, all properly issued and undisputed invoices shall be paid within 97 days of the last day of the month in which the invoice was received by the Customer. These payment terms shall prevail to the exclusion of any payment terms of the Supplier, express or implied, save in the case that the Supplier's payment terms exceed 97 days of the last day of the month in which the invoice was received by the Customer.
- 7.5** Where the Order specifies that any Goods and/or Services shall be paid for in instalments prior to delivery of the Goods and/or the Services, the Customer may at its sole discretion where so specified in the Order require the Supplier:
- 7.5.1 to put in place a Performance Bond; and/or
- 7.5.2 to put in place a Parent Company Guarantee; and/or
- 7.5.3 to hold all monies received from the Customer under such instalments upon trust for the Customer until the Customer's acceptance of the Goods under Condition 6 and/or the Supplier's complete and satisfactory delivery of the Services (as applicable), at which time they shall become the Supplier's monies, and until such time the Supplier shall keep all monies paid by the Customer in instalments unmixed and separate from the general monies of the Supplier in a separate bank account designated as a Customer trust account.
- 7.6** Without prejudice to the generality of Conditions 21, the Customer shall be entitled to deduct from the price (and any other sums) due to the Supplier any sums that the Supplier may owe to the Customer at any time.
- 7.7** If any undisputed sum properly due from the Customer to the Supplier is not paid on the due date then interest shall accrue and be payable on any such sum at the rate of one per cent per annum above the business base rate of Barclays Bank plc from time to time, apportioned on a daily basis, until payment in full of the overdue sum and whether before or after judgment.
- 7.8** Time for payment shall not be of the essence (nor made of the essence by notice) of the Contract.
- 7.9** Suppliers will be charged once per annum in respect of being an approved supplier to the Customer. This charge (**Approval Charge**) relates to the time incurred by the Customer in approving Suppliers to work with it in production of the Customer's products. The Customer will take the actual invoiced turnover with each supplier in the annual period between July and June of each relevant calendar year for the basis of calculating the following year's charge and subsequent annual charges will relate to the following 12 month turnover. Once charged or debited there will be no refund or repayment of the Approval Charge.

Annual Turnover with Supplier	Charge
£5 million plus	£3,500
£2 million - £4,999,999	£2,000
£1 million - 1,999,999	£1,500
£500,000-£999,999	£1,000
£250,000-499,999	£500
£50,000-249,999	£250

- 8. INSURANCE**
- 8.1** The Supplier shall, unless otherwise agreed by the Customer in writing, insure against its liabilities arising out of or in connection with the performance of the Contract including (without prejudice to the generality of the foregoing):
- 8.1.1 employers' liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident unlimited in any 12 month period;
- 8.1.2 public liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident unlimited in any 12 month period;
- 8.1.3 professional indemnity insurance for no less than £2,000,000 (two million pounds) in respect of any one incident unlimited in any 12 month period.
- 8.2** The Supplier shall promptly at the Customer's request provide the Customer with details of all relevant insurance policies and copies of any cover-notes relating to the insurances effected pursuant to this Contract and will use all reasonable endeavours to procure that:

- 8.2.1 the interest to the Customer are duly noted on insurance policies;
- 8.2.2 subrogation rights are waived by the insurers; and
- 8.2.3 such insurance policies include non-avoidance of liability provisions to ensure that an act by the Supplier which negates the terms of an insurance policy will not prejudice the insurance cover benefit to the Customer.
- 8.3** If the Supplier shall fail to comply in any respect with the provisions of this Condition 8, the Customer shall be entitled (but not obliged) to arrange the insurance cover required by this Condition 8 which the Supplier shall pay for, and the Supplier hereby indemnifies the Customer fully and holds it fully indemnified against all costs, claims, demands and liabilities incurred by the Customer as a result.

PLEASE NOTE EACH OF THE FOLLOWING IMPORTANT PROVISIONS OF CONDITION 9:

9. LIMITATION OF LIABILITY

- 9.1** Neither party excludes or limits liability to the other party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law (e.g. breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 (as amended) or Section 2 of the Supply of Goods and Services Act 1982).
- 9.2** Subject to Condition 9.1 above, the Customer's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract and/or any dispute arising therefrom shall be limited to a maximum of the total price payable under the Contract in respect of any Goods and/or Services which have given rise to the claim or liability.
- 9.3** Subject to Conditions 9.1 and 9.2, the Customer shall not be liable to the Supplier for any:
- 9.3.1 loss of profits, (whether direct or indirect); and/or
- 9.3.2 loss of business; and/or
- 9.3.3 loss of business opportunity; and/or
- 9.3.4 depletion of goodwill; and/or
- 9.3.5 loss or corruption of data, or the costs and consequences of any data restoration; and/or
- 9.3.6 costs of loans, borrowing and/or of temporary financing; and/or
- 9.3.7 additional staffing costs; and/or
- 9.3.8 costs, expenses or other claims for any type of special, direct or consequential loss or compensation (including loss or damage suffered as a result of an action brought by a third party); and/or
- 9.3.9 legal costs incurred by the Supplier which exceed the sum of £10,000 (exclusive of VAT) in relation to any dispute arising out of, or in connection with, the Contract and/or its subject matter (including but not limited to the costs of legal advice; legal representation; technical experts; expert witnesses; mediation costs; arbitration costs; ICC, CEDR and/or other ADR costs; litigation costs; adjudication costs; and/or court fees), whatsoever and howsoever caused which arises out of or in connection with these Conditions and/or the Contract, even if such loss was reasonably foreseeable or the Customer had been advised of the possibility of the Supplier incurring the same.
- 9.4** The Supplier acknowledges and agrees that it is reasonable that all members of the Customer's Group, subject to Conditions 1.7 and 23 shall be entitled to recover any losses resulting from a breach of these Conditions as if it was an original party to the Contract.
- 10. TERMINATION**
- 10.1** The Customer shall be entitled at its sole discretion to terminate the Contract instantly upon written notice to the Supplier in the event that:
- 10.1.1 an order is made or a resolution passed for the winding up of the Supplier or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Supplier; or any order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 10.1.2 a receiver is appointed over any of the Supplier's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier or if any other person takes possession of or sells the other party's assets; or
- 10.1.3 the Supplier makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- 10.1.4 the Supplier is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986; or
- 10.1.5 any distraint is levied against the Supplier or its property by any other party; or
- 10.1.6 the Supplier ceases, or threatens to cease, to carry on business; or
- 10.1.7 any action or occurrence analogous to the provisions of Conditions 10.1.1 to 10.1.6 occurs in respect of the Supplier in any jurisdiction; or
- 10.1.8 the termination rights in Condition 22.2 relating to Change of Control are exercised by the Customer; or
- 10.1.9 the Supplier is in breach of these Conditions and such breach is not capable of remedy; or
- 10.1.10 the Supplier is in breach of these Conditions and such breach is capable



- of remedy, but the breach has not been remedied within 7 days of issue of a written notice by the Customer to the Supplier specifying the breach and required remedy.
- 10.2** The Customer shall be entitled to terminate any Contract for Services for convenience by giving the Supplier at least one month's prior written notice of termination.
- 10.3** Upon termination or expiry of the Contract the Supplier shall (if required by the Customer) promptly return to the Supplier any Customer property held by it.
- 10.4** The Supplier shall following termination or expiry of the Contract, co-operate with and provide the Customer with such information, advice, and/or on-going assistance as the Customer may require (at the Customer's request and, if terminated by the Customer other than pursuant to Condition 10.2, at the Supplier's expense) in order to ensure that such termination and its consequences causes the minimum disruption to the business, affairs and responsibilities of the Customer and in order to enable a smooth and seamless transition in the supply of the Services.
- 10.5** For the avoidance of doubt, the Customer shall not be obliged to pay any cancellation charge or other compensation to the Supplier (including in respect of redundancy payments for the Supplier's employees or loss of profits) by reason of expiry of the Contract or lawful termination of the Contract by the Customer.
- 10.4** The provisions of Conditions 3.1, 3.2, 3.3, 3.6, 4, 5.6, 6.6, 6.7, 6.8, 7.5, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23 and 24 shall survive termination of the provision of any Goods and/or Services under an Order, and the termination of any relevant Contract, howsoever arising.
- 11. CONFIDENTIAL INFORMATION**
- 11.1** Subject to Condition 11.7, the Supplier undertakes to, and to procure that its Employees shall:
- 11.1.1 keep secret and maintain confidential the Confidential Information; and
- 11.1.2 use Confidential Information only in connection with the provision of the Goods and Services and in particular not use any Confidential Information to obtain a commercial, trading or any other advantage; and
- 11.1.3 upon demand:
- (a) procure the return to the Customer of all items and copies of all or any Confidential Information and
- (b) expunge all Confidential Information from any computer, word processor or other similar device into which it was programmed; and
- (c) destroy all notes, analyses or memoranda containing or referring to Confidential Information; and
- (d) if so required, furnish to the Customer a certificate of a director of the Supplier confirming that to the best of his or her knowledge, information and belief, having made all proper enquiries, the provisions of this Condition 11.1 have been complied with.
- 11.2** To secure the confidentiality attaching to the Confidential Information, the Supplier shall:
- 11.2.1 keep separate all Confidential Information and all information generated by the Supplier based on Confidential Information from all other documents and records of the Supplier;
- 11.2.2 not use, copy, photocopy, reproduce, transform or store any of the Confidential Information in an externally accessible computer or transmit it in any form or by any means whatsoever outside of its usual place of business;
- 11.2.3 at the request of the Customer made at any time, immediately deliver up to the Customer all documents and other material in the possession, custody or control of the Supplier (or of any Employee pursuant to Condition 11.2.4) that bear or incorporate any part or parts of the Confidential Information;
- 11.2.4 undertake to permit access to the Confidential Information only to those Employees who reasonably need access to such Confidential Information for the purpose of the provision of the Services, and on the conditions that such Employees shall have:
- (a) entered into legal binding confidentiality obligations to the Supplier on terms at least equivalent to the restrictions on the use of Confidential Information as set out in these Conditions; and
- (b) been informed of the Customer's interest in the Confidential Information and the terms of these Conditions, and instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of these Conditions.
- 11.3** The Supplier warrants to the Customer that it shall be responsible for the enforcement of the confidentiality obligations and that it shall procure that all Employees given access to Confidential Information under Condition 11.2.4 shall comply with the provisions of these Conditions.
- 11.4** Nothing contained in these Conditions shall prevent the Supplier from imparting Confidential Information which it or any company in its Group may be obliged to disclose or make available:
- 11.4.1 under any applicable rule of law or other governmental regulation of the United Kingdom or any other competent jurisdiction; or
- 11.4.2 in connection with proceedings before a Court of competent jurisdiction in relation to these Conditions or under any Court order;
- Provided that the Supplier shall promptly notify the Customer if any Confidential Information is required or requested to be disclosed and, so far as it is permitted by law, seek the Customer's approval regarding the manner of such disclosure and the content of any announcement or, at the Customer's expense, cooperate with any reasonable action which it may elect to take to challenge the validity of such requirement.
- 11.5** If any proceedings are commenced or action taken which could result in Confidential

- Information having to be disclosed the Supplier shall immediately notify the Customer of such proceedings or action in writing and shall take all available steps to resist or avoid such proceedings or action (including all steps that the Customer may reasonably request) and keep the Customer fully and promptly informed of all matters and developments relating to such proceedings. If the Supplier is obliged to disclose Confidential Information to any third party, such disclosure will only be made to such third party and the Supplier will disclose only the minimum amount of information consistent with satisfying its obligation to such person. Prior to making any such disclosure, the Supplier will give written notice to the Customer of the information it proposes to disclose containing a copy of the proposed disclosure and confirmation that its legal advisers' opinion is that such disclosure is required and the Supplier will take into account any reasonable comments the Customer may have in relation to the contents of the proposed disclosure.
- 11.6** The duties of confidentiality set out in this Condition 11 shall survive termination of each respective Contract for the longer of a period either of ten years from the date of its termination, or any period over ten years from the date of its termination that is specified in the Order.
- 11.7** The parties agree that in respect of Confidential Information protected by any executed NDA, the provisions of this Condition 11 shall not apply, and shall not supersede, supplement nor replace the provisions of any executed NDA in respect of that Confidential Information, and that this Condition 11 shall only apply to any such Confidential Information to the extent that such Confidential Information is not already protected by any executed NDA in place between the parties.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- PLEASE NOTE THE PROVISIONS OF CONDITION 12.8**
- 12.1** Unless otherwise agreed in writing in the Order, the Customer shall gain no Intellectual Property Rights in the Goods, which shall remain with their respective owner.
- 12.2** Unless otherwise agreed in writing in the Order, the Intellectual Property Rights in any Outputs arising from the performance of the Services will vest in the Customer absolutely, but for the avoidance of doubt, any designs or works created by the Supplier and/or the Employees which are created outside of the performance of the Services, or which are owned by the Supplier or its licensors prior to the date of the applicable Contract, will remain the property of the Supplier or of its licensors (as applicable).
- 12.3** Ownership of all Intellectual Property Rights in the Specification (where the Specification is given to the Supplier by the Customer) shall remain at all times with the Customer (or with the Customer's licensors as applicable), and where the Specification in any Goods has been created by the Supplier for the Customer as an Output of any Services, ownership of that Specification shall vest in and remain at all times with the Customer. The Supplier shall hold such Specification as the Customer's Confidential Information and shall not be permitted to make any further use of it outside of the Contract (either on its own behalf or on behalf of any other person) nor to disclose it to any third party.
- 12.4** The Supplier shall promptly disclose and shall procure that the Employees promptly disclose to the Customer's Representative full details of all Outputs created in the course of the provision of the Services in the format made available to the Supplier from time to time by the Customer.
- 12.5** The Supplier hereby assigns and shall procure that each of the Employees assigns to the Customer (including, to the extent necessary and permissible, by way of future assignment) the copyright and other Intellectual Property Rights in the Outputs which are created by the Supplier and/or the Employees in the performance of the Services or which relate to the Project.
- 12.6** The Supplier shall, and shall procure that the Employees shall:
- 12.6.1 keep all Outputs confidential;
- 12.6.2 whenever requested to do so by the Customer and in any event on the termination of the applicable Contract, promptly to delivery to the Customer all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Outputs and the process of their creation which are in its possession, custody or power;
- 12.6.3 not register nor attempt to register any of the Intellectual Property Rights in the Outputs, unless instructed in writing to do so by the Customer; and
- 12.6.4 promptly upon demand by the Customer to execute all such documents and do all acts as the Customer believes are reasonably necessary to confirm that absolute title in all Intellectual Property Rights in the Outputs vests in the Customer.
- 12.7** The Supplier warrants to the Customer that:
- 12.7.1 it has not given and will not give permission to any third party to use any of the Outputs, nor any of the Intellectual Property Rights in the Outputs;
- 12.7.2 it is unaware of any use by any third party of any of the Outputs or Intellectual Property Rights in the Outputs; and
- 12.7.3 the use of the Outputs or the Intellectual Property Rights in the Outputs by the Customer will not infringe the rights of any third party.
- 12.8** The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of the use or possession of the Goods and/or the Outputs.



12.8 The Supplier shall procure that each of the Employees waives any moral rights in the Outputs to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Outputs or other materials, infringes the Supplier's moral rights.

12.9 The Supplier acknowledges that no further remuneration or compensation other than that provided for in these Conditions is or may become due to the Supplier in respect of the of its obligations under this Condition 12.

12.10 In the event that the Supplier is subject to a claim from any Employees under Section 40 of the Patents Act 1977 (or under any similar statutory provision which may replace or supplement Section 40 of the Patents Act 1977 in the future), the Supplier acknowledges and agrees that it is the applicable employer of the Employees, and agrees that it shall not join the Customer as a party to any such claim, nor purport to pass responsibility to the Customer for any sums that may be payable to such Employees, nor seek to recover any such sums from the Customer.

12.11 In the event that any claim or attack is brought or threatened by any third party against the Supplier and/or any Employees in relation to any Intellectual Property Rights in or connected with the Outputs, the Supplier shall immediately notify the Customer with full details, and the Supplier shall liaise with the Customer in the conduct of its defence (at the Supplier's own cost) and shall not take any steps which in the Customer's opinion would prejudice the Customer's position in relation to its ownership of the Intellectual Property Rights in the Outputs.

12.12 The Supplier acknowledges that (where relevant) all materials, equipment, drawings, specifications, data supplied by Customer to Supplier (**Customer Materials**) and all rights in them are and shall remain the exclusive property of Customer and shall keep Customer Materials in safe custody at its own risk, maintain them in good condition until returned to Customer, and not dispose or use them other than in accordance with Customer's written instructions or authorisation.

13. NON-SOLICITATION

13.1 The Supplier covenants with the Customer that the Supplier shall not, and shall procure that its Employees shall not at any time for a period of 6 months after the end of the Contract directly or indirectly:

13.1.1 solicit or entice away or seek to entice away or employ or procure to be employed any person who is or has been an employee of the Customer throughout the duration of the Contract;

13.1.2 employ or procure to be employed any former employees of the Customer who have been employed by the Customer in the 12 months prior to the termination date of the Contract and who have had direct dealings with clients of the Customer.

13.1.3 solicit or entice away or seek to entice away from doing business with the Customer any person, firm, company or organisation who throughout the duration of the Contract was a client of the Customer.

13.2 The parties in all respects consider the restrictions contained in this Condition 13 reasonable.

13.3 Without prejudice to Condition 19, the provisions of Conditions 13.1.1, 13.1.2 or 13.1.3 are separate and severable and shall be construed and be capable of enforcement accordingly.

14. NOTICES

14.1 Any notice or other communication given or made under these Conditions shall be in writing and may be sent by email, save in respect of a notice of termination which shall be served under the provisions of Condition 14.2 below. Without affecting the validity of the original notice or communication sent by email, the party who sends such email may, in addition and at its sole discretion, send a paper copy of such communication to the recipient under Condition 14.2.

14.2 Any such notice or other communication shall be sent to the address for service set out in the Order, or where the Order is silent on such matters, to the relevant party's registered office and, if so addressed, shall be deemed to have been duly given or made as follows:

14.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;

14.2.2 if sent by first class post, two working days after the date of posting.

14.3 If any notice or other communication would otherwise be deemed to be given or made after 17:00 on any working day, such notice or other communication shall be deemed to be given or made at 9:00 am on the next following working day.

15. CONTRACT FORMATION AND ENTIRE AGREEMENT

15.1 Without prejudice to Condition 2, and subject to Condition 11.7 and to any prior undertaking, representation, warranty, promise, or assurance made to the Customer about the Goods and/or the Services and/or the Outputs by the Supplier, the Contract constitutes the entire and only agreement and understanding between the parties in connection with the provision of the relevant Goods and/or Services under that Contract.

15.2 The Supplier acknowledges that it has not entered into the Contract in reliance on any undertaking, representation, warranty, promise, assurance or arrangement of any nature from the Customer which is not expressly set out herein.

15.3 Nothing in this Condition 15 shall limit or exclude either party's liability for fraud or for fraudulent misrepresentation.

16. FORCE MAJEURE

16.1 Subject to Condition 16.2, neither party shall be liable to the other for any delay or failure in performing its obligations under these Conditions, if such delay or failure

results from events or circumstances outside of its reasonable control, and which could not have been foreseen by it or, if such events or circumstances could have been foreseen, the affected party is not reasonably able to take steps to avoid or to mitigate. Such delay or failure shall not constitute a breach of these Conditions where notified to the other party as soon as reasonably practicable and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, for a period of up to 30 days. Should such circumstances last for more than 30 days, the Customer shall be entitled to terminate the Contract with immediate effect on written notice to the Supplier.

16.2 Any Impact Event or other consequences of Brexit or of a Pandemic affecting the Supplier; failures or delays by the Supplier's own suppliers and/or sub-contractors; and strikes by the Supplier's employees shall not be events or circumstances outside of the Supplier's reasonable control which shall entitle it to invoke Condition 16.1.

17. SUCCESSORS AND ASSIGNS/SUB-CONTRACTING

17.1 The Contract shall be binding upon, and enure for the benefit of, the parties' successors in title.

17.2 The Supplier shall not assign or novate all or any part of the benefit of, or its rights or benefits under, the Contract incorporating these Conditions without the prior written consent of the Customer. Any rights which are the subject of a purported assignment in breach of this clause shall be unenforceable unless and until the breach is rectified.

17.3 The Supplier shall not sub-contract any of its obligations under the Contract incorporating these Conditions without the prior written consent of the Customer (at the Customer's sole discretion) and such circumstances where the Customer's consent under this Condition 17.3 is granted, the Supplier agrees that it shall be fully liable to the Customer for all acts and/or omissions of the permitted sub-contractor as if such acts and/or omission were the Supplier's own.

17.4 The Customer shall have the right to assign the benefit or novate the benefit and the burden of the Contract in whole or in part to any third party.

18. VAT

18.1 All payments to be made pursuant to these Conditions shall (save where otherwise specifically stated) be exclusive of Value Added Tax (if applicable). Any Value Added Tax chargeable in respect of the matters giving rise to such payments shall be added to the amount of, and paid in addition to, them.

19. SEVERABILITY

19.1 If any wording in any provision of the Contract and/or these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such wording shall be deemed removed from the relevant provision, and the invalidity or unenforceability of such wording shall not affect the remainder of that provision, nor the remainder of the relevant Contract and/or of these Conditions, and the remaining wording of such provision and all other provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

20. WAIVERS AND RELEASES

20.1 The rights, powers and remedies conferred on the parties in these Conditions are cumulative and are additional to, and not exclusive of, any rights, powers and remedies provided by law or otherwise available to it.

20.2 No delay or omission on the part of any party to these Conditions in exercising any right, power or remedy provided by law or under these Conditions shall impair such right, power or remedy or operate as waiver thereof.

20.3 The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

20.4 Except as specifically provided in these Conditions, no waiver of any provision of the Conditions shall in any event be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such provision.

21. SET-OFF

21.1 Any sums credited by or due from the Customer to the Supplier may, at any time and from time to time without notice, be applied to and/or set-off by the Customer against any liabilities or obligations of the Supplier to the Customer, whether absolute or contingent, due or to become due, direct or indirect, whether under the Contract or otherwise.

22. CHANGE OF CONTROL

22.1 If at any time whilst the Contract is in force there is a Change of Control of the Supplier, the Supplier shall notify the Customer within 14 days of the Change of Control having occurred.

22.2 Where the Customer believes in its sole discretion that the continuation of the Contract would, as a result of the Change of Control, adversely affect the Customer's commercial interest, the Customer shall have the right to terminate the Contract forthwith by giving notice to the Supplier, such notice to be served during a period of 90 calendar days from the date on which the notification from the Supplier of the Change of Control is served (for the avoidance of doubt, whether served in the correct period or served late). After such time the Customer's rights to terminate due to a Change of Control under this Condition 22 shall lapse.

22.3 For the avoidance of doubt, failure to notify a Change of Control under Condition 22.1 shall be deemed to be a breach which is not capable of remedy of any applicable Contract for the purpose of Condition 10.1.9.

23. THIRD PARTY RIGHTS

23.1 With the exception of the members of the Customer's Group, a person who is not a party to the Contract incorporating these Conditions has no right under the



- Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.
- 23.2** All rights conferred under these Conditions (or the Contract made pursuant to these Conditions) may be enforced by any member of the Customer's Group that is relying on them.
- 24. IMPACT EVENTS**
- 24.1** The Supplier warrants to the Customer that it has acted in accordance with Good Industry Practice and official advice from reputable sources, including but not limited to, government bodies, the National Health Service and the World Health Organisation in responding to the potential impacts of a Pandemic, including but not limited to: taking sufficient steps to prevent its spread; implementing business continuity plans; holding sufficient stocks of Goods so as to ensure, as far as is reasonably practicable that all such Goods will be delivered to the Customer on time and at the price originally agreed.
- 24.2** The Supplier warrants to the Customer that it has acted in accordance with Good Industry Practice in relation to preparing for the potential impacts of Brexit, including but not limited to: holding sufficient stocks of Goods: fixing transport costs; and where applicable hedging currency, in order to honour all Contracts for Goods with the Customer where the Goods are to be delivered after Brexit, so as to ensure that all such Goods will be delivered to the Customer on time and at the price originally agreed.
- 24.3** If an Impact Event occurs, the Customer may initiate a negotiation by sending a written notice to the Supplier (**Impact Notice**) giving reasonable details of the relevant Impact Event and of its negative impact on the Customer. On delivery of an Impact Notice:
- 24.3.1** the parties shall meet with 10 days of the Impact Notice and as reasonably necessary thereafter to discuss, acting reasonably, amendments to the Contract that may be required to put the Customer in the position it would have been in if not for the Impact Event that has had a negative impact on the Customer;
- 24.3.2** each party shall comply with all reasonable requests made by the other party for additional information and documents relating to the Impact Event relied on, and its negative impact on the Customer, always provided that information so disclosed shall be a party's confidential information for the purposes of Condition 11 (Confidentiality); and any amendments agreed by parties to the Contract shall be recorded in accordance with Condition 2.5, signed by both parties.
- 24.4** If the parties fail to agree a variation in accordance with Condition 25.2. within 14 days of the date of the Impact Notice the Customer may (without affecting any other right or remedy available to it) terminate the Contract without charge or penalty by giving the Supplier no less than 7 days' notice.
- 24.5** An Impact Event shall not permit the Supplier to terminate or alter the Contract, nor invalidate any of its terms or discharge or excuse performance under it by the Supplier. For the avoidance of doubt, in no circumstances shall any consequences of Brexit or of a Pandemic give rise to an event of force majeure under Condition 16 which would excuse the Supplier from performance. If there is an inconsistency between the provisions of this Condition 24 and any other provision of this agreement, the provisions of this Condition 24 shall prevail.
- 25. DATA PROTECTION**
- 25.1** Under these Conditions the terms "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "processing and appropriate technical and organisational measures" shall have the same meaning as in the Data Protection Legislation.
- 25.2** Both parties shall comply with all applicable requirements of the Data Protection Legislation. This Condition 25 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 25.3** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 25.4** Without prejudice to the generality of Condition 25.2, the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 25.5** Without prejudice to the generality of Condition 25.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 25.5.1** process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by law to otherwise process that Personal Data. Where the Provider is relying on a legal requirement as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required the Supplier is strictly prohibited by law from so notifying the Customer;
- 25.5.2** ensure that it has in place appropriate technical and organisational

- measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 25.5.3** ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 25.5.4** not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 25.5.5** assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 25.5.6** notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 25.5.7** at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by law to store the Personal Data; and
- 25.5.8** maintain complete and accurate records and information to demonstrate its compliance with this Condition 25.5.
- 25.6** The Customer may in its discretion, consent in writing to the appointing by the Supplier of a third-party processor and consent is required for each third-party processor. In the event that the Customer gives consent, the Supplier shall confirm that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Condition 25 and in either case which the undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Condition 25.
- 25.7** The parties may at any time, agree to revise this Condition 25 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

26. GOVERNING LAW AND JURISDICTION

- 26.1** These Conditions, and the Contract the, shall be governed by and construed in accordance with the laws of England.
- 26.2** In the event of a dispute between the parties, the Customer shall (at its sole discretion) decide whether to have the matter finally resolved under Conditions 26.3 and 26.4. In all other circumstances the parties submit to the exclusive jurisdiction of the English Courts.
- 26.3** All disputes arising out of or in connection with these Conditions (or the Contract made pursuant to these Conditions), which are referred to arbitration under Condition 26.2, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 26.4** It is agreed that in relation to any dispute referred to arbitration under Condition 26.2:
- 26.4.1** the tribunal shall include at least on arbitrator who is an expert in the purchasing and use of the Goods and/or Services that are in dispute; and
- 26.4.2** the place of arbitration shall be York, England; and
- 26.4.3** the language of arbitration shall be English; and
- 26.4.4** subject to Condition 9, each party shall bear the costs of arbitration as directed by the arbitrators.

