

1. DEFINITIONS

Agreement means, together with these Conditions, any (i) Binding Purchase Order in relation to the Supplies; or (ii) where there is a supply agreement entered into and effective between Buyer and Supplier in relation to the Supplies, that agreement and all Binding Purchase Orders placed under it;

Binding Purchase Order means a Purchase Order which has been accepted or is deemed accepted by Supplier;

Buyer 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;

Buyer Code means Buyer’s code of conduct from time to time located at: https://www.abf.co.uk/documents/pdfs/policies/supplier_code_of_conduct.pdf or otherwise provided by Buyer;

Buyer Indemnified Parties means Buyer’s agents, employees, officers and Buyer Affiliates;

Delivery Point means the unloading point at the address stated in the Agreement or such other address as is notified to Supplier by Buyer.

Goods means the goods to be supplied by Supplier in accordance with the Agreement together with, where applicable, all documents, manuals and instructions which pertain to them;

Insolvency Event means, in respect of a party, circumstances in which such 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;

Intellectual Property 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 rights existing anywhere in the world, whether registered or not and including, without limitation, any applications for the same);

Loss(es) means all direct, indirect or consequential losses, damages, expenses, costs, claims, fines, proceedings, or demands;

Purchase Order means a valid and official purchase order placed by Buyer for the supply of Goods or the performance of Services. At Buyer’s option (as formally communicated in writing by Buyer) providing a PO number shall be deemed to amount to placing of a Purchase Order;

Service Completion Date means the date specified as such in the Agreement or as otherwise agreed between the parties in writing;

Service Description means the description of the Services contained or referred to in the Agreement (or otherwise stipulated to Supplier by Buyer in writing prior to the date of the Agreement (as applicable));

Services means the services (if any) described or referenced in the Agreement, to be performed by Supplier;

Specification means the specifications, drawings, samples or other descriptions of the Supplies contained or referred to in the Agreement (or otherwise supplied to Supplier by Buyer in writing prior to the date of the Agreement (as applicable));

Supplier means the company, partnership or person to whom a Purchase Order is addressed or otherwise as stipulated in the Agreement;

Supplies means the Goods and/or Services; and

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

2. GENERAL

2.1 These Conditions apply to the Agreement and to any Purchase Order to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 A Purchase Order becomes a Binding Purchase Order for Supplies, which is binding on Supplier once accepted or deemed accepted by Supplier. Acceptance of Purchase Orders may be in writing or, where applicable, in accordance with the terms of the relevant supply agreement in force and effective between Buyer and Supplier. Commencement of performance of the Supplies shall also be deemed acceptance by Supplier of the relevant Purchase Order. The Conditions may not be varied unless agreed by an authorised representative of Buyer in writing.

2.3 Buyer shall be under no responsibility to accept delivery of, or pay for, Supplies for which a Purchase Order has not been provided by Buyer.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Supplier shall only use Buyer’s Intellectual Property Rights for the purpose of fulfilling the Agreement and only to the extent authorised by Buyer in writing from time to time.

3.2 Any Intellectual Property Rights created by Supplier in the production, performance or delivery of the Supplies are hereby assigned to Buyer with full title guarantee and without restriction. Supplier shall execute and deliver such documents and perform such acts as may be required to give effect to such assignment without any additional fee. Supplier warrants that (i) the manufacture and delivery of the Goods and the performance of the Services does not infringe the Intellectual Property Rights of any third party and (ii) the receipt, use, modification, sale, disposal and/or other exploitation by Buyer of the Supplies does not and will not infringe the Intellectual Property Rights of any third party. Supplier shall indemnify and keep indemnified Buyer (and shall also pay to Buyer such amounts as would indemnify and keep indemnified Buyer Indemnified Parties) in full in respect of all Losses incurred or suffered due to any actual or alleged infringement of any third-party Intellectual Property Rights related to such Supplies.

4. QUALITY

4.1 Supplier warrants, represents and undertakes that:

4.1.1 the Goods and Services shall comply with the relevant Specifications and Service Descriptions in all respects and Supplier shall comply with (and ensure the Goods comply with, as applicable) all applicable laws, statutory requirements and regulations relating to the manufacture, packaging, labelling, delivery and sale of the Goods and the performance of the Services in force as at the date of delivery of Goods to Buyer and/or performance of Services (as applicable);

4.1.2 the Goods shall be free from defects in design, quality, material and workmanship, shall be free from faults, and shall be fit for any purpose held out by Supplier or made known to Supplier or for which they are commonly used;

4.1.3 in producing and providing the Supplies, Supplier shall comply with any industry standards and certifications together with any of Buyer’s policies and procedures that have been made known to Supplier and that are relevant to the Supplies; and

4.1.4 the Services will be provided using appropriately qualified, skilled and trained personnel, and with due care and diligence and to such high standard of quality as is reasonable for Buyer to expect in the circumstances, and shall be fully completed to Buyer’s reasonable satisfaction by no later than the Service Completion Date.

5. TERMINATION

5.1 Buyer may cancel a Purchase Order prior to its acceptance or deemed acceptance, without liability to Supplier. Following its acceptance or deemed acceptance, Buyer may cancel a Binding Purchase Order in respect of all or part of the Supplies by giving notice to Supplier at any time prior to completion of delivery or performance of the relevant Supplies, in which event (i) Buyer’s sole liability shall be to pay Supplier the value for the work in progress relating to the cancelled Supplies, up to a maximum amount of the price for the cancelled Supplies and (ii) Supplier shall deliver to Buyer any relevant work in progress or, upon agreement with Buyer, sell such work in progress and account to Buyer for any proceeds of sale.

5.2 Buyer may terminate the Agreement immediately by written notice to Supplier and without liability to Supplier if:

5.2.1 Supplier suffers an Insolvency Event; or

5.2.2 there is a change in control of Supplier. For the purpose of this Condition, “control” means the ability to direct the affairs of another whether by voting or contractual rights or otherwise and whether directly or indirectly.

5.3 Supplier may terminate the Agreement immediately by written notice to Buyer and without liability to Buyer if Buyer suffers an Insolvency Event.

5.4 Termination of the Agreement (whether in respect of all or part of the Supplies), howsoever arising, shall be without prejudice to the rights and remedies of the parties accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall remain in effect notwithstanding termination.

6. INDEMNITY & INSURANCE

6.1 Supplier shall indemnify and keep indemnified the Buyer (and shall also pay to Buyer such amounts as would indemnify and keep indemnified the Buyer Indemnified Parties) in full against all Losses incurred or suffered to the extent that such Losses arise as a result of the performance of the Services or the supply of the Goods, or otherwise as a result of any breach of the Agreement by Supplier.

6.2 Supplier shall at all times maintain in force with a substantial and reputable insurance company such insurance as is (i) required by law or (ii) is usual good industry practice to maintain by persons engaged in business of the kind carried on by Supplier.

6.3 Supplier will, on request, provide to Buyer copies of certificates of insurance, together with satisfactory evidence of the payment of premiums, to demonstrate compliance with the above requirements.

7. PRICE

7.1 The price of the Supplies shall be as stated in the Agreement, or as otherwise agreed in writing. Such prices shall be exclusive of any applicable VAT (which shall only be payable by Buyer on receipt of a valid VAT invoice) and shall be inclusive of all charges for packaging, carriage, insurance, and delivery of the Supplies to the Delivery Point and inclusive of any duties, taxes or levies other than VAT.

8. PAYMENT

8.1 Supplier shall invoice Buyer in £ Sterling (or such other currency specified in the Agreement) (a) after delivery of the Goods or (b) in arrears after performance of the Services, as detailed in the Agreement or otherwise as agreed in writing between Supplier and Buyer. Each invoice (and, where relevant, packing list) shall quote the Binding Purchase Order number, item number(s) and line item number(s). Invoices shall be sent to the “Bill To” address set out in the Agreement.

8.2 Buyer shall pay undisputed invoices within thirty (30) days (or within such other period as set out in the Agreement) following receipt of a proper and valid invoice. Interest shall apply at an annual rate of 2% above the base lending rate of Barclays Bank plc in respect of late payment of invoices which fall due for payment under this Condition 8. Buyer may withhold payment of disputed invoices and shall notify Supplier of any such dispute.

8.3 Buyer shall not be obliged to pay any invoice which is received more than six (6) months following delivery of the relevant Supplies.

8.4 Without prejudice to any other right or remedy, Buyer may set off any amount owing at any time from Supplier to Buyer or any Buyer Affiliate against any amount payable by Buyer to Supplier in respect of the Agreement or any other agreement.

8.5 In the event Buyer reasonably considers that any invoice submitted by Supplier is defective or relates to Supplies provided other than in accordance with Supplier’s obligations under the Agreement, Buyer shall be entitled to withhold payment of the disputed amount (without prejudice to any other right or remedy it may have) pending resolution of the dispute between the parties.

9. DELIVERY

9.1 Title in the Goods shall pass to Buyer on delivery to the Delivery Point or, if earlier, on payment for the relevant Goods. Unless agreed otherwise in writing, delivery of Goods shall be made by Supplier, DDP (Incoterms 2020), to the Delivery Point on the date (and, where applicable, within the delivery time window) and in the condition set out in the Agreement. Supplies delivered outside specified times remain at Supplier’s risk and may be refused by Buyer.

9.2 An advice/delivery note quoting Supplier’s name, the Binding Purchase Order number, Supplier’s stock number(s) and any additional information or documentation agreed in writing must accompany each delivery or consignment of Goods and must be displayed prominently on each delivery or consignment. Any required Certificate of Analysis, manufacturer’s batch number or other manufacturing records should be sent separately to Buyer’s designated Quality Assurance team. Supplier shall retain samples of each batch of Goods delivered to Buyer and shall make a reasonable amount of such retained samples available to Buyer upon request.

9.3 Buyer will not pay for or return packaging materials unless previously agreed between the parties and confirmed in writing.

9.4 Supplier must report immediately to Buyer the occurrence of any event which is likely to affect delivery of the Supplies, setting the reasons for the delay, new delivery date and the actions which have been initiated. Time is of the essence as to the delivery of the Supplies.

9.5 The quantity of Goods or type of Services set out in the Agreement may not be changed by Supplier without Buyer’s prior written consent.

9.6 The Supplier shall provide the Buyer with valid preferential origin statements or certificates as appropriate for the Goods supplied under this Agreement, in accordance with the applicable rules of origin and preferential trade agreements between the countries of export and import. The Supplier shall ensure that the preferential origin statements or certificates are accurate, complete, and comply with all relevant legal and regulatory requirements. The Supplier shall also provide the Buyer with any additional information or documentation that the Buyer may reasonably request to verify the preferential origin of the Goods. The Supplier shall be solely responsible for any VAT, duty, penalties, interest, or other costs or liabilities that may arise as a result of the Supplier’s failure to provide valid preferential origin statements or certificates, or as a result of any errors, omissions, misrepresentations, or fraud in the preferential origin statements or certificates. The Supplier shall indemnify and hold harmless the Buyer from and against any such costs or liabilities, and shall promptly reimburse the Buyer for any payments that the Buyer may be required to make to any customs or tax authorities in connection with the preferential origin of the Goods. The Supplier shall also cooperate fully with the Buyer and any customs or tax authorities in the event of any audits, inquiries, investigations, or disputes relating to the preferential origin of the Goods.

10. REMEDIES

10.1 Any remedy available to Buyer is cumulative and is not in lieu of any other remedy. If any Supplies are not supplied in accordance with, or Supplier fails to comply with, the Agreement, or if the Supplies are not or are only partially fulfilled by the relevant due delivery date or Service Completion Date, Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion and without liability to Supplier:

10.1.1 in the event of material default by Supplier, to cancel the Agreement or Supplies (and/or any other agreements and/or purchase orders) in whole or in part and require a full and immediate refund for the Supplies so cancelled. Material default for these purposes shall include, but not be limited to, any breach of Conditions 3, 4, 9.1, 11 or 12.7;

10.1.2 to reject the Supplies (in whole or in part) and (in respect of Goods) return them to (or make the same available for collection by) Supplier at the risk and cost of Supplier and require a full refund for the Supplies so rejected (such refund to be paid immediately by Supplier);

10.1.3 at Buyer’s option, to give Supplier the opportunity, at Supplier’s expense, to remedy any defect in the Supplies or to supply replacement Supplies and carry out any other necessary work to ensure that the Agreement (as applicable) is fulfilled within a time limit specified by Buyer;

10.1.4 to carry out (either by itself or through a third-party supplier), at Supplier’s expense, any work, or purchase alternative goods and/or services, as may be necessary to make the Supplies comply with the Agreement; and

10.1.5 to claim such Losses as may have been sustained as a result of Supplier’s default.

10.2 If there is any matter which may cause a safety risk to consumers arising from the Supplies or a potential recall or withdrawal of any Goods (or Buyer products which contain the Goods) the Supplier shall give advance notice to Buyer as soon as possible of any action Buyer or Supplier is obliged to take and full details of the underlying issue. Except as required by law, Supplier shall not seek to commence any recall or withdrawal of Goods or Buyer products without the prior written consent of Buyer. Supplier shall indemnify and keep indemnified Buyer (and shall also pay to Buyer such amounts as would indemnify and keep indemnified Buyer Indemnified Parties) in full against all Losses incurred or suffered as a result of recall or withdrawal of a product incorporating the Supplies to the extent that such Losses arise as a result of the Supplies.

10.3 All of the obligations in this Condition 10 and in Condition 4 shall further apply in relation to any rectified or replacement Supplies.

11. ETHICAL STANDARDS AND SANCTIONS COMPLIANCE

11.1 Supplier will:

11.1.1 comply with the Buyer Code and undertake any training in relation to the Buyer Code that Buyer may reasonably require from time to time;

11.1.2 take appropriate action to require Supplier’s own contractual partners to comply with: (a) the Buyer Code; or (b) alternative obligations that ensure that each of the principles contained in the Buyer Code are complied with in materially the same way, including by agreeing appropriate contractual obligations and control mechanisms, and passing on the obligations in this Condition 11.1.2 within their own supply chain; and

11.1.3 comply with 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.

12. MISCELLANEOUS

12.1 Supplier will not assign, transfer or subcontract (or grant any security over) the whole or any part of its rights, remedies or obligations in connection with the Agreement without the prior written consent of Buyer. Where assignment, transfer or subcontracting occurs, with or without consent, Supplier shall retain liability for the acts and omissions of any such assignees, transferees or subcontractors as fully as if such acts or omissions were the acts or omissions of Supplier.

12.2 Any waiver by Buyer of any breach or default by Supplier shall only be effective if granted in writing, and if so granted not be deemed a waiver of any subsequent or other breach or default.

12.3 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.

12.4 Upon prior and reasonable written notice, Supplier will permit Buyer and any of its authorised representatives to have access to Supplier’s premises, personnel and records (relevant to the Supplies) to verify Supplier’s compliance with the Agreement.

12.5 The Agreement will not be enforceable by any person other than Buyer and Supplier.

12.6 Any notice required or permitted to be given by either party to the other shall be in writing addressed to the other 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.

12.7 Each party acknowledges that it may have access to confidential information relating to the business/affairs of the other party. Each party will keep confidential, and will not use for any purpose other than the performance of (or the exercise of rights in respect of) the Agreement, and will not, subject to Condition 12.8, without the prior written consent of the other, disclose, directly or indirectly, to any third party, any confidential information of the other party.

12.8 Buyer may disclose confidential information received from Supplier to Buyer Affiliates, service providers and professional advisors under conditions of confidentiality.

12.9 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.

12.10 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.

12.11 The Agreement and any dispute or claim arising out of or in connection with the same or their subject matter or formation, whether of a contractual or non-contractual nature, shall be governed by and construed in accordance with English law. The parties submit to the exclusive jurisdiction of the English courts. The United Nations Convention on the International Sale of Goods shall not apply to the Agreement.