

# Terms and Conditions of Sale

## Fresh Direct (UK) Limited

### 1. DEFINITIONS

In these terms and conditions:

- 1.1. "**Company**" means Fresh Direct (UK) Limited, trading as Fresh Direct, Fresh Fayre, Wild Harvest and M&J Seafood.
- 1.2. "**Contract**" means the contract between the Company and the Customer for the sale and purchase of the Products in accordance with these Terms and Conditions.
- 1.3. "**Customer**" means any person, firm, company or other legal entity which places an order, or buys any Products from the Company.
- 1.4. "**Delisted Date**" means the date from when the Company shall cease to deliver a Delisted Product.
- 1.5. "**Delisted Product**" means a Nominated Product that the Customer no longer requires.
- 1.6. "**Equipment**" means any machine or equipment.
- 1.7. "**Food**" means any food or beverage.
- 1.8. "**Listed Product**" means a Product which is part of the Company's standard range of products which is available for purchase by all Customers and which are publicised as being for sale on the Company's website and/or in their printed publications.
- 1.9. "**Nominated and Sourced Product Form**" means the Nominated and Sourced Product Form of the Company from time to time.
- 1.10. "**Nominated Product**" means a Product that is not sourced by the Company and which does not form part of the Company's range of listed Products, but which at the request of the Customer the Company has agreed to purchase from the supplier thereof and supply to the Customer.
- 1.11. "**Non-Food**" means any goods which are not Food or Equipment.
- 1.12. "**Products**" means any Food and/or Equipment and/or Non-Food agreed in the Contract to be supplied by the Company to the Customer.
- 1.13. "**Sourced Product**" means a Product that has been sourced by the Company to fulfil a specific requirement of the Customer and which is not one of the Company's Listed Products (for example, vendor branded products which are not Nominated Products).
- 1.14. "**Statutory Interest**" means statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended & supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 1.15. "**Terms and Conditions**" means these terms and conditions of sale as may be amended by the Company from time to time without notice.

### 2. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions shall be incorporated into the Contract and shall apply in place of and prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by trade, custom or practice or course of dealing. Other purported terms and conditions which the Customer seeks to impose or incorporate are expressly rejected by the Company.

### **3. ORDERS AND CONTRACTS**

- 3.1. By placing an order with the Company either via the Company's telesales department, the Company's website or otherwise, the Customer is offering to purchase the Products in accordance with these Terms and Conditions. The Contract shall be formed when the Company acknowledges acceptance of the Customer's order or commences delivery of the Products to the Customer, whichever occurs earlier.
- 3.2. Each Order shall be subject to a minimum value of £80.00.
- 3.3. The Customer is responsible for ensuring that the terms of any order are complete and accurate.
- 3.4. No pricing made available to the Customer in any way shall constitute an offer and the Company may amend its prices at any time.
- 3.5. Price is exclusive of any sales, processing, excise, value added or other taxes, duties or levies (collectively, "**Taxes**"), and such Taxes shall be added to the price of the Product on the related invoice and paid by the Customer.
- 3.6. Price is inclusive of delivery of the Products by the Company to such address as is agreed by the Company, but does not include carriage and packing on special or urgent deliveries requested by the Customer, or on orders of a non-routine nature.
- 3.7. The Contract is subject to availability of stock and the Company reserves the right to vary or alter the specification of Products without notice unless otherwise agreed in writing with the Customer.
- 3.8. The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Company which is not set out in the Contract.
- 3.9. Any drawings, descriptions or serving suggestions contained in the Company's catalogues, brochures or sales material (including '**The List**') or on the Company's website are produced for the sole purpose of giving an approximate idea of the Products. They shall not form part of the Contract or have any contractual force.

### **4. TITLE & RISK**

- 4.1. Subject to Condition 4.2, the risk of loss or damage to the Products shall pass to the Customer on completion of delivery, in accordance with Condition 6.3.
- 4.2. The Company shall not be responsible for any loss or damage to the Products which is caused due to the condition of the Delivery Location or any act, default or omission of the Customer or its representatives.
- 4.3. Title in the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account.
- 4.4. Until title passes to the Customer, the Customer shall hold the Products on a fiduciary basis as the Company's bailee; store the Products separately from all other products in such a way that they are clearly identifiable as the property of the Company; maintain the Products in a satisfactory condition; keep the Products insured on the Company's behalf for their full price against all risks; and notify the Company immediately if it becomes subject to any of the events listed in Condition 9, but the Customer may resell or use the Products in the ordinary course of its business.
- 4.5. If before title in the Products passes to the Customer the Customer becomes subject to any of the events listed in Condition 9 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may

have, the Company may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored, in order to recover them.

## **5. PAYMENT TERMS**

- 5.1. Where credit is granted, unless otherwise agreed in writing, all sums payable in respect of the Products must be paid without deductions within 14 days from the end of the calendar month in which the invoice was raised.
- 5.2. Failure to pay by the due date shall entitle the Company to suspend delivery of all unexecuted or future orders. The time for payment of the price of the Products shall be of the essence.
- 5.3. The Company reserves the right at any time in its absolute discretion to demand immediate payment of any account whether due or not and to take legal action to recover the debt and costs.
- 5.4. If payment is not made in accordance with this Condition, the Company reserves the right to charge Statutory Interest on the overdue balances for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgement or decree against the Customer. In addition each overdue invoice will attract a late payment compensation fee of £40.
- 5.5. In the event of any cheques, standing orders or direct debits due from a Customer to the Company being dishonoured, a charge of £45 (or such other sum as the Company may from time to time advise the Customer) will be made on the Customer's account to cover bank and administrative costs.
- 5.6. The Company reserves the right in its absolute discretion to refuse to grant credit and in the event the Customer enters into an insolvency arrangement or the Customer's credit rating or financial standing deteriorates in a way that presents a credit risk, the Company may remove any credit terms previously agreed with the Customer and (without prejudice to any other rights that the Company may be entitled to) impose new payment terms, including payment on delivery.
- 5.7. The Company may, at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## **6. DELIVERY**

- 6.1. Deliveries of Products to the Customer shall be in accordance with the Company's delivery schedule. The Company shall not be liable for any loss or damage whatsoever arising as a result of a delay or failure to deliver Products by a particular date or arising as a result of any cause beyond the Company's control, including any force majeure event or the Customer's failure to provide adequate delivery instructions. Time for delivery shall not be of the essence.
- 6.2. Delivery of Products shall be made by the Company to a reasonably accessible location at the Customer's premises, or as otherwise agreed between the parties ("**the Delivery Location**"). The Customer shall allow the Company access to such premises and shall use best endeavours to ensure that a responsible person shall be at the place of delivery to take delivery of the Products and to sign for them. If such a person is not present at the time of delivery the Customer hereby consents to the Company leaving the Products at what appear to be the premises nominated by the Customer as the place of delivery, and when the Products are so left, risk in the Products shall pass to the Customer and no liability shall remain with the Company in respect of the Products.
- 6.3. Delivery of the Products shall be completed once the Products are unloaded at the Delivery Location.

- 6.4. If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may do one or more of the following:
- 6.4.1. charge the Customer the cost of carriage of the refused delivery both to and from the Delivery Location in addition to the Company's administration charges involved;
  - 6.4.2. charge the Customer the full cost price of the Products and a sum in respect of its loss of profit provided that the Company shall use its reasonable endeavours to mitigate such loss;
  - 6.4.3. where the delivery includes Equipment, store the Equipment until actual delivery and charge the Customer for the reasonable cost of storage (including insurance);
  - 6.4.4. sell the Equipment and charge the Customer for any shortfall below the price under the Contract.
- 6.5. If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery, the Customer shall not be entitled to refuse to accept redelivery after the estimated date for delivery by reason of the consequent failure of those Products to meet any shelf-life requirement or otherwise.
- 6.6. The Company may deliver the Products by instalments, which shall be invoiced separately. Any delay in delivery shall not entitle the Customer to cancel any order or any instalment.

## **7. ACCEPTANCE AND CLAIMS PROCEDURE**

- 7.1. The Customer must check that the quantity and specifications of Products delivered correspond with the Contract before signature of the delivery note.
- 7.2. Claims in respect of short deliveries or damage to Products reasonably visible on inspection must be made to the Company within 24 hours of the time of the delivery which gives rise to the claim. The Customer must retain damaged Products for inspection and collection. Credit will only be granted by the Company if the provisions of this Condition are complied with.

## **8. CANCELLATION OF AN ORDER**

An order may not be cancelled by the Customer without the written consent of the Company. The Company reserves the right upon consent being given to levy a cancellation charge of not less than 20% of the Products which are the subject of the order (or orders) to cover the Company's losses arising from the cancellation. Nominated Products and Sourced Products ordered on behalf of the Customer cannot be returned, unless the manufacturer agrees to accept them. Where this is not the case the Customer shall purchase all such Nominated Products and Sourced Products from the Company within 14 days.

## **9. INSOLVENCY OF CUSTOMER**

In the event that:

- 9.1. the Customer makes any voluntary arrangement with its creditors, proposes to enter into a company voluntary arrangement, enters into administration, is unable to pay its debts as they fall due, makes application to a Court to suspend enforcement action against it, goes into liquidation (in the event that the Customer is a company) or becomes insolvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Customer is an individual or firm), or if the equivalent occurs under any jurisdiction; or
- 9.2. an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Customer; or

- 9.3. the Customer suspends any payments hereunder or ceases, or threatens to cease, to carry on business; or
- 9.4. the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for, the price shall become immediately payable notwithstanding any previous agreement to the contrary.

## **10. WARRANTIES**

- 10.1. The Company warrants that all Food Products (with the exception of Nominated Products in respect of which the Company's complete responsibility is set out in Condition 13) shall comply with the Food Safety Act 1990 and all relevant UK legislation from time to time in force. The Company warrants that all Non-Food Products (with the exception of Nominated Products in respect of which the Company's complete responsibility is set out in Condition 13) shall comply with all relevant UK legislation from time to time in force.
- 10.2. The Company gives no warranties in respect of the Equipment. The Company will, to the extent that it is able, at the sole cost and expense of the Customer, assign or make available to the Customer the benefit of any warranties or guarantees relating to the Equipment obtained from the manufacturer thereof.
- 10.3. The Customer shall ensure that no Food it purchases from the Company is sold (or otherwise distributed) after any 'best-before' or 'use-by' dates included on the Products or their packaging. To the extent any Food is sold (or otherwise distributed) by the Customer after any such date, it shall be at the Customer's sole risk, and the Customer shall compensate and hold the Company harmless against any losses, claims, expenses or damages it incurs howsoever relating to the same.

## **11. LIMITATION OF THE COMPANY'S LIABILITY**

- 11.1. Nothing in these Terms and Conditions shall limit or exclude the Company's liability for: (i) death or personal injury caused by the Company's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) for any other matter in respect of which it would be unlawful for the Company to exclude or limit liability.
- 11.2. Subject to Condition 11.1 and 11.3:
  - 11.2.1. the Company shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence) or otherwise, for any loss of profit, loss of opportunity, loss of customers, loss of reputation or any indirect or consequential loss arising under or in connection with the Contract;
  - 11.2.2. in respect of damaged or otherwise defective Products, the Company's liability shall be limited to replacing the whole or any part of the respective Product or, at the Company's option, refunding or crediting the purchase price or a prorated portion of the purchase price;
  - 11.2.3. in all other circumstances, the Company's total liability to the Customer in respect of all other losses arising under or in connection with a Contract shall in no circumstances exceed the value of the order to which the Contract relates.
- 11.3. Subject to Condition 11.1, the Company shall not be liable for any losses, expenses, claims or damages suffered or incurred by the Customer (or any third party):
  - 11.3.1. to the extent they arise as a consequence of any damage or defect in a Product which was caused by its unsatisfactory storage, treatment or

handling (other than by the Company or its representatives) or any act or omission on the part of the Customer or its employees, agents or representatives;

11.3.2. relating to damaged or defective Products where the damage or defect ought reasonably to have been noticeable at the time of delivery, and the damage or defect is not reported to the Company in accordance with Condition 7;

11.3.3. claims not notified to the Company within 3 months of the respective invoice (or, if later, when the Customer became aware, or ought reasonably to have become aware, of the claim).

## **12. INTELLECTUAL PROPERTY**

12.1. Copyright and all other intellectual property rights in the Products shall remain at all times the property of the Company. The Customer shall acquire no rights in the Products except as expressly provided for in these Terms and Conditions.

12.2. The Customer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Company websites. The Customer may not use the Company websites or their content for any commercial purpose (including the collection and use of any listings, descriptions, or prices), make any derivative or commercially exploitative use of the websites or their content, download or copy account information, use any data mining, robots or similar data gathering and extraction tools without the explicit written consent of the company. Any unauthorised use terminates any permissions granted.

## **13. NOMINATED PRODUCTS**

In the event that any of the Products to be supplied under the Contract are Nominated Products, the Customer shall be required to complete a Nominated and Sourced Product Form and the following additional provisions shall apply:

13.1. The Customer shall be responsible for agreeing directly with the suppliers of Nominated Products all matters concerning Nominated Products including the specification and delivery conditions. The Company shall have no responsibility for the selection of any supplier of Nominated Products or for their performance. The Customer shall provide the Company with full details of all suppliers of Nominated Products in order for the Company to fulfil its obligations under the Contract. The Customer shall be responsible for forecasting its requirements for any new Nominated Products for the first 6 weeks.

13.2. Where the Company has agreed to purchase Nominated Products, the Company shall purchase Nominated Products from suppliers at the price agreed with the suppliers by the Customer and on the basis of the Company's procurement terms from time to time in force. For the avoidance of doubt, the Company will not be liable to pay the nominated supplier for Nominated Products unless and until it has received full payment in cleared funds from the Customer in respect of such Nominated Products. Where the Customer has made only part payment of total amounts invoiced by the Company, monies received will be allocated first to the payment of the Company's wholesale product debt and then to Nominated Product stock ordered on the Customer's behalf.

13.3. The Customer undertakes to complete and sign, and procure that its nominated suppliers complete and sign, a New Supplier Form which incorporates the Company's procurement terms and payment terms.

13.4. For the avoidance of doubt, in no circumstance will the Company be liable to pay the supplier of Nominated Products for such Nominated Products except as set out in Clause 13.2 above, including, but not limited to, where a deterioration of the Customer's financial situation or its insolvency leaves it unable pay its invoices in full to the Company and the Company is holding stock of Nominated Products. Where

the Customer has failed to order or pay for Nominated Product stock for any reason and the Company is holding stock of Nominated Products, the supplier will be offered the opportunity to collect the Nominated Product stock from the Company, or alternatively will instruct the Company to dispose of such Nominated Products at the supplier's expense.

- 13.5. Subject to the Customer accurately providing all the required information to the Company on a Nominated and Sourced Product Form, the Company shall endeavour to set up new Nominated Products within 28 days of receiving a completed Nominated and Sourced Product Form. For the avoidance of doubt, once set up the Company shall be able to place orders with the nominated supplier and begin to arrange for stock to be brought into its network. The Customer shall provide the Company with a price file for each supplier of a Nominated Product showing the relevant cost. Any variation to the cost price of Nominated Products will only be accepted by the Company on submission of an agreed price change form from the Customer and with a minimum of 14 days' notice.
- 13.6. If the Customer no longer requires any particular Nominated Product (a "**Delisted Product**"), it shall give the Company not less than 14 days' notice of the Delisted Date.
- 13.7. The Customer shall be responsible for ensuring that all Nominated Products, when delivered to or collected by, the Company, shall conform with all applicable laws, including, but not limited to, the Food Safety Act 1990 (as amended by the Food Standards Act, 1999) and the Company shall have no liability to the extent that this is not the case. The Customer shall be responsible for ensuring that the Nominated Products are sourced from reputable suppliers who have achieved a nationally recognised product safety standard or have been formally assessed by the Customer as acceptable on product safety, legality, and integrity grounds.
- 13.8. The Customer shall procure the agreement of the supplier of Nominated Products to the document 'Fresh Direct Supplier Charter' (the Company's guide for suppliers).
- 13.9. The Company shall be entitled to charge the Customer in respect of the stocking and delivery of the Nominated Products. The Company shall be entitled to adjust any such on-cost charge at its sole discretion.
- 13.10. Unless otherwise agreed, the Company shall arrange for Nominated Products to be delivered into its depots for onward delivery by the Company to the Customer. The Company shall not be obliged to carry out any checks or quality control inspections in relation to Nominated Products and Nominated Products are sold by the Company to the Customer on this basis.
- 13.11. The Customer acknowledges and agrees that the inability of the Company to perform any part of the Contract by reason of the performance deficiencies of any of the suppliers of Nominated Products shall not be deemed to be a breach of the Contract by the Company, and that, in such circumstances, the Customer will pursue its remedies directly against the defaulting supplier of the Nominated Product and no such performance deficiencies shall be counted in the calculation of any service levels agreed between the Company and the Customer.
- 13.12. The Company shall not be responsible for any costs resulting from shelf life expiry, waste, discontinuance of stock, or unordered stock of Nominated Products. In any of these events, the Company may charge the Customer the full selling price of such Nominated Products in addition to any disposal or return costs. The Customer will indemnify and hold harmless the Company in respect of any liability, claims, or losses arising in connection with Nominated Product stock held by the Company, including for the avoidance of doubt, any claim by a nominated supplier in relation to payment for such Nominated Product stock.

- 13.13. The Company may refuse or remove any Nominated Product at any time by providing notice in writing to the Customer.
- 13.14. The nominated suppliers shall be responsible for the Company's consolidation charges payable in respect of the storage, handling and picking of the Nominated Products whilst in the Company's consignment warehouse.
- 13.15. The Company may in its sole discretion delist any Nominated Product where the Customer's requirement for such Product falls below 20 cases per week.

#### **14. SOURCED PRODUCTS**

In the event that any of the Products to be supplied under the Contract are Sourced Products, the Customer shall be required to complete a Nominated and Sourced Product Form and the following additional provisions will apply:

- 14.1. The Company shall agree with the suppliers of Sourced Products all matters concerning Sourced Products, including the specification, which shall be based on the requirements of the Customer. The Customer shall be responsible for forecasting its requirements for any new Sourced Products for the first 6 weeks.
- 14.2. The Company shall purchase Sourced Products from suppliers at the cost price agreed between it and the supplier of the Sourced Products. The Company shall agree the selling price of the Sourced Products with the Customer and shall notify the Customer of any cost price increases imposed on it by the supplier of the Sourced Products, which shall result in an increase in the selling price to the Customer.
- 14.3. The Company shall not be responsible for any costs resulting from shelf life expiry, waste, discontinuance of stock or unordered stock of the Sourced Products. In any of these events, the Company may charge the Customer the full selling price of such Sourced Products in addition to any disposal or return costs.

#### **15. FORCE MAJEURE**

"**Force Majeure**" means an event beyond the reasonable control of the Company and includes, without limitation, events that may arise due to the actual or planned departure of the United Kingdom or part thereof from the European Union ("**Brexit**") or out of negotiations between the United Kingdom and the European Union regarding the same, which, whilst they may or may not have been reasonably foreseeable, could not have been reasonably avoided; any failure or delay on the part of a supplier to supply Products and/or services; acts of God; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion; terrorist activity; pandemic; local or national emergency (including an emergency service to a hospital); sabotage or riots; industrial action; floods, fires, explosions or other catastrophes; closure of motorways or other roads, or unusually severe traffic congestion (including closure or delay at borders), leaving no reasonable alternative route; unusually severe weather conditions; loss of power or telecommunications systems; or computer failure or breakdown (which could not have been reasonably avoided).

The Company reserves the right to defer the date of delivery or reduce the volume of Products ordered by the Customer or to cancel the Contract without liability to the Customer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to a Force Majeure Event. The Company may make adjustments to the pricing and/or other financial terms relating to supply of the Products, to take into account the financial impact of any Force Majeure Event on the Company.

#### **16. CONFIDENTIALITY**

- 16.1. The Customer undertakes that it shall not at any time disclose any confidential information concerning the business, affairs, customers, suppliers, pricing or other financial information of the Company to any third party whatsoever.



- 16.2. The Customer may disclose the Company's confidential information (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations to the Company under the Contract, provided that such employees, officers, representatives and advisors to whom the Customer discloses such information comply in full with this Condition; and (ii) as may be required by law, court order or any government or regulatory authority, provided that the Customer gives as much advance notice of such disclosure to the Company, as possible.
- 16.3. The Customer shall not use the Company's confidential information for any purpose other than to perform its obligations under the Contract.
- 16.4. Where the Customer purchases from the Company via a buying group or consortia ("**Buying Group**"), the Customer consents to the Company supplying to the Buying Group information relating to the Customer's purchases, its account and payment history, or any other information requested by the Buying Group in connection with the Customer's trading relationship with the Company. The Customer also consents to the Company sharing confidential information with other entities within the Company's group, including parents, subsidiaries or affiliates of the Company.

## **17. ERECTION AND INSTALLATION**

Where erection, installation and positioning of Equipment are part of the Contract the Customer shall ensure that the site is clear and ready for installation. Should the site not be ready as stipulated for such installation, the Company reserves the right to make a charge for any costs incurred as a result of it being so prevented and any delay or subsequent installation.

## **18. DATA PROTECTION**

- 18.1. "**Data Protection Legislation**" shall mean the UK Data Protection Legislation and any other European Union legislation (including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018) and all other applicable legislation and regulatory requirements relating to Personal Data in force from time to time.
- 18.2. Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 18.3. The parties acknowledge that for the purposes of the Data Protection Legislation, both parties may be a Controller and/or a Processor of Personal Data and both parties agree to only process Personal Data on the instructions of the Controller (as agreed from time to time) in the pursuance of, and to the extent and duration of, the Company supplying Products and/or services to the Customer.
- 18.4. The Customer will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the Company.
- 18.5. The Customer consents to the Company appointing any third-party processor of Personal Data under the Contract. The Company confirms that it has entered or, as the case may be, will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this Condition 18.

## **19. ANTI-FACILITATION OF TAX AVOIDANCE**

- 19.1. The Customer shall:
  - 19.1.1. not engage in any activity, practice or conduct which would constitute either:
    - 19.1.1.1. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

- 19.1.1.2. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
  - 19.1.2. have and shall maintain in place throughout the term of the Contract such measures as are reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Customer); and
  - 19.1.3. promptly report to the Company any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract;
- 19.2. The Customer shall ensure that any person associated with the Customer who is performing services in connection with the Contract does so in compliance with obligations equivalent to those imposed on the Customer in Condition 19.1 ("**Relevant Tax Evasion Terms**"). The Customer shall be responsible for the observance and performance by such persons of the Relevant Tax Evasion Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Tax Evasion Terms.
- 19.3. For the purposes of Condition 19.1, the meaning of reasonable prevention procedures shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

## **20. ADDITIONAL TERMS**

- 20.1. Failure or delay on the part of the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20.2. If any provision of the Contract is found by any Court, tribunal or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 20.3. The Company may make available certain promotions from time to time, for example Nectar Points are available to certain Customers. The Customer shall be bound by any additional terms that apply to any promotions and the Customer shall be responsible for ensuring the Customer contact registered to receive the promotion (for example Nectar points) is correct and updated accordingly from time to time.
- 20.4. Where available, the Company may provide the Customer with an online account, through which the Customer will be able to place and manage its orders and to find out about relevant promotions that are available to the Customer. This online account will allow the Customer to be better informed about the status of orders and, over time, the Company may add other features to help its Customers to manage contact details, account information and to track its orders. Order confirmations will be e-mailed to the Customer when orders are placed (or amendments to the Order are agreed). Where the Customer has an online account, it is the responsibility of the Customer to ensure its account details remain up to date and accurate. Access to the Customer's online account will be subject to the Company's website terms of use and acceptable use policy. The Company reserves the right to refuse the service, terminate accounts or remove or edit content or functionality at any time.

- 20.5. Telephone calls (inbound and outbound) and email correspondence with the Company may be recorded or monitored. By using or accepting such communication methods, the Customer agrees to the recording or monitoring of the same for quality purposes and training.
- 20.6. The Company, but not the Customer, may assign its rights and obligations under the Contract.
- 20.7. Any written communication given pursuant to the Contract must be sent by pre-paid first class post to the registered office of the addressee or such other address as may have been notified in writing and shall be deemed to have been received by the addressee two days after the date of posting.
- 20.8. The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 20.9. The Contract shall be governed by the laws of England and the Company and the Customer agree to submit to the exclusive jurisdiction of the English Courts.
- 20.10. If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.
- 20.11. The signature on behalf of a Customer who is a limited company by any person purporting to sign with the Customer's authority shall bind the Customer and the Customer shall be liable to comply with the terms of the Contract.
- 20.12. The Customer shall be liable to comply with the terms of the Contract and pay for any Products which are ordered using its Customer account number.
- 20.13. The Company reserves the right to amend these Terms and Conditions from time to time by posting updated versions on its website.

# Terms and Conditions of Sale

## Kent Frozen Foods Limited

### 1. DEFINITIONS

In these terms and conditions:

- 1.1. "**Company**" means Kent Frozen Foods Limited.
- 1.2. "**Contract**" means the contract between the Company and the Customer for the sale and purchase of the Products in accordance with these Terms and Conditions.
- 1.3. "**Customer**" means any person, firm, company or other legal entity which places an order, or buys any Products from the Company.
- 1.4. "**Delisted Date**" means the date from when the Company shall cease to deliver a Delisted Product.
- 1.5. "**Delisted Product**" means a Nominated Product that the Customer no longer requires.
- 1.6. "**Food**" means any food or beverage.
- 1.7. "**Listed Product**" means a Product which is part of the Company's standard range of products which is available for purchase by all Customers and which are publicised as being for sale on the Company's website and/or in their printed publications.
- 1.8. "**Nominated Product**" means a Product that is not sourced by the Company and which does not form part of the Company's range of listed Products, but which at the request of the Customer the Company has agreed to purchase from the supplier thereof and supply to the Customer.
- 1.9. "**Non-Food**" means any goods which are not Food.
- 1.10. "**Products**" means any Food and/or Non-Food agreed in the Contract to be supplied by the Company to the Customer.
- 1.11. "**Statutory Interest**" means statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended & supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 1.12. "**Terms and Conditions**" means these terms and conditions of sale as may be amended by the Company from time to time without notice.

### 2. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions shall be incorporated into the Contract and shall apply in place of and prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by trade, custom or practice or course of dealing. Other purported terms and conditions which the Customer seeks to impose or incorporate are expressly rejected by the Company.

### 3. ORDERS AND CONTRACTS

- 3.1. By placing an order with the Company either via the Company's telesales department, the Company's website or otherwise, the Customer is offering to purchase the Products in accordance with these Terms and Conditions. The Contract shall be formed when the Company acknowledges acceptance of the Customer's order or commences delivery of the Products to the Customer, whichever occurs earlier.
- 3.2. Each Order shall be subject to a minimum value of £50.00.
- 3.3. The Customer is responsible for ensuring that the terms of any order are complete and accurate.
- 3.4. No pricing made available to the Customer in any way shall constitute an offer and the Company may amend its prices at any time.

- 3.5. Price is exclusive of any sales, processing, excise, value added or other taxes, duties or levies (collectively, "**Taxes**"), and such Taxes shall be added to the price of the Product on the related invoice and paid by the Customer.
- 3.6. Price is inclusive of delivery of the Products by the Company to such address as is agreed by the Company, but does not include carriage and packing on special or urgent deliveries requested by the Customer, or on orders of a non-routine nature.
- 3.7. The Contract is subject to availability of stock and the Company reserves the right to vary or alter the specification of Products without notice unless otherwise agreed in writing with the Customer.
- 3.8. The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Company which is not set out in the Contract.
- 3.9. Any drawings, descriptions or serving suggestions contained in the Company's catalogues, brochures or sales material or on the Company's website are produced for the sole purpose of giving an approximate idea of the Products. They shall not form part of the Contract or have any contractual force.

#### **4. TITLE & RISK**

- 4.1. Subject to Condition 4.2, the risk of loss or damage to the Products shall pass to the Customer on completion of delivery, in accordance with Condition 6.3.
- 4.2. The Company shall not be responsible for any loss or damage to the Products which is caused due to the condition of the Delivery Location or any act, default or omission of the Customer or its representatives.
- 4.3. Title in the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account.
- 4.4. Until title passes to the Customer, the Customer shall hold the Products on a fiduciary basis as the Company's bailee; store the Products separately from all other products in such a way that they are clearly identifiable as the property of the Company; maintain the Products in a satisfactory condition; keep the Products insured on the Company's behalf for their full price against all risks; and notify the Company immediately if it becomes subject to any of the events listed in Condition 9, but the Customer may resell or use the Products in the ordinary course of its business.
- 4.5. If before title in the Products passes to the Customer the Customer becomes subject to any of the events listed in Condition 9 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored, in order to recover them.

#### **5. PAYMENT TERMS**

- 5.1. Where credit is granted, unless otherwise agreed in writing, all sums payable in respect of the Products must be paid without deductions within 14 days from the end of the calendar month in which the invoice was raised.
- 5.2. Failure to pay by the due date shall entitle the Company to suspend delivery of all unexecuted or future orders. The time for payment of the price of the Products shall be of the essence.

- 5.3. The Company reserves the right at any time in its absolute discretion to demand immediate payment of any account whether due or not and to take legal action to recover the debt and costs.
- 5.4. If payment is not made in accordance with this Condition, the Company reserves the right to charge Statutory Interest on the overdue balances for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgement or decree against the Customer. In addition each overdue invoice will attract a late payment compensation fee of £40.
- 5.5. In the event of any cheques, standing orders or direct debits due from a Customer to the Company being dishonoured, a charge of £45 (or such other sum as the Company may from time to time advise the Customer) may be made on the Customer's account to cover bank and administrative costs.
- 5.6. The Company reserves the right in its absolute discretion to refuse to grant credit and in the event the Customer enters into an insolvency arrangement or the Customer's credit rating or financial standing deteriorates in a way that presents a credit risk, the Company may remove any credit terms previously agreed with the Customer and (without prejudice to any other rights that the Company may be entitled to) impose new payment terms, including payment on delivery.
- 5.7. The Company may, at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## **6. DELIVERY**

- 6.1. Deliveries of Products to the Customer shall be in accordance with the Company's delivery schedule. The Company shall not be liable for any loss or damage whatsoever arising as a result of a delay or failure to deliver Products by a particular date or arising as a result of any cause beyond the Company's control, including any force majeure event or the Customer's failure to provide adequate delivery instructions. Time for delivery shall not be of the essence.
- 6.2. Delivery of Products shall be made by the Company to a reasonably accessible location at the Customer's premises, or as otherwise agreed between the parties ("**the Delivery Location**"). The Customer shall allow the Company access to such premises and shall use best endeavours to ensure that a responsible person shall be at the place of delivery to take delivery of the Products and to sign for them. If such a person is not present at the time of delivery the Customer hereby consents to the Company leaving the Products at what appear to be the premises nominated by the Customer as the place of delivery, and when the Products are so left, risk in the Products shall pass to the Customer and no liability shall remain with the Company in respect of the Products.
- 6.3. Delivery of the Products shall be completed once the Products are unloaded at the Delivery Location.
- 6.4. If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may do one or more of the following:
  - 6.4.1. charge the Customer the cost of carriage of the refused delivery both to and from the Delivery Location in addition to the Company's administration charges involved;
  - 6.4.2. charge the Customer the full cost price of the Products and a sum in respect of its loss of profit provided that the Company shall use its reasonable endeavours to mitigate such loss.

- 6.5. If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery, the Customer shall not be entitled to refuse to accept redelivery after the estimated date for delivery by reason of the consequent failure of those Products to meet any shelf-life requirement or otherwise.
- 6.6. The Company may deliver the Products by instalments, which shall be invoiced separately. Any delay in delivery shall not entitle the Customer to cancel any order or any instalment.

## **7. ACCEPTANCE AND CLAIMS PROCEDURE**

- 7.1. The Customer must check that the quantity and specifications of Products delivered correspond with the Contract before signature of the delivery note.
- 7.2. Claims in respect of short deliveries or damage to Products reasonably visible on inspection must be made to the Company within 24 hours of the time of the delivery which gives rise to the claim. The Customer must retain damaged Products for inspection and collection. Credit will only be granted by the Company if the provisions of this Condition are complied with.

## **8. CANCELLATION OF AN ORDER**

An order may not be cancelled by the Customer without the written consent of the Company. The Company reserves the right upon consent being given to levy a cancellation charge of not less than 20% of the Products which are the subject of the order (or orders) to cover the Company's losses arising from the cancellation. Nominated Products ordered on behalf of the Customer cannot be returned, unless the manufacturer agrees to accept them. Where this is not the case the Customer shall purchase all such Nominated Products from the Company within 14 days.

## **9. INSOLVENCY OF CUSTOMER**

In the event that:

- 9.1. the Customer makes any voluntary arrangement with its creditors, proposes to enter into a company voluntary arrangement, enters into administration, is unable to pay its debts as they fall due, makes application to a Court to suspend enforcement action against it, goes into liquidation (in the event that the Customer is a company) or becomes insolvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Customer is an individual or firm), or if the equivalent occurs under any jurisdiction; or
- 9.2. an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Customer; or
- 9.3. the Customer suspends any payments hereunder or ceases, or threatens to cease, to carry on business; or
- 9.4. the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for, the price shall become immediately payable notwithstanding any previous agreement to the contrary.

## **10. WARRANTIES**

- 10.1. The Company warrants that all Food Products shall comply with the Food Safety Act 1990 and all relevant UK legislation from time to time in force. The Company warrants that all Non-Food Products shall comply with all relevant UK legislation from time to time in force.

10.2. The Customer shall ensure that no Food it purchases from the Company is sold (or otherwise distributed) after any 'best-before' or 'use-by' dates included on the Products or their packaging. To the extent any Food is sold (or otherwise distributed) by the Customer after any such date, it shall be at the Customer's sole risk, and the Customer shall compensate and hold the Company harmless against any losses, claims, expenses or damages it incurs howsoever relating to the same.

## **11. LIMITATION OF THE COMPANY'S LIABILITY**

11.1. Nothing in these Terms and Conditions shall limit or exclude the Company's liability for: (i) death or personal injury caused by the Company's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) for any other matter in respect of which it would be unlawful for the Company to exclude or limit liability.

11.2. Subject to Condition 11.1 and 11.3:

11.2.1. the Company shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence) or otherwise, for any loss of profit, loss of opportunity, loss of customers, loss of reputation or any indirect or consequential loss arising under or in connection with the Contract;

11.2.2. in respect of damaged or otherwise defective Products, the Company's liability shall be limited to replacing the whole or any part of the respective Product or, at the Company's option, refunding or crediting the purchase price or a prorated portion of the purchase price;

11.2.3. in all other circumstances, the Company's total liability to the Customer in respect of all other losses arising under or in connection with a Contract shall in no circumstances exceed the value of the order to which the Contract relates.

11.3. Subject to Condition 11.1, the Company shall not be liable for any losses, expenses, claims or damages suffered or incurred by the Customer (or any third party):

11.3.1. to the extent they arise as a consequence of any damage or defect in a Product which was caused by its unsatisfactory storage, treatment or handling (other than by the Company or its representatives) or any act or omission on the part of the Customer or its employees, agents or representatives;

11.3.2. relating to damaged or defective Products where the damage or defect ought reasonably to have been noticeable at the time of delivery, and the damage or defect is not reported to the Company in accordance with Condition 7;

11.3.3. claims not notified to the Company within 3 months of the respective invoice (or, if later, when the Customer became aware, or ought reasonably to have become aware, of the claim).

## **12. INTELLECTUAL PROPERTY**

12.1. Copyright and all other intellectual property rights in the Products shall remain at all times the property of the Company. The Customer shall acquire no rights in the Products except as expressly provided for in these Terms and Conditions.

12.2. The Customer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Company websites. The Customer may not use the Company websites or their content for any commercial purpose (including the collection and use of any listings, descriptions, or prices), make any derivative or commercially exploitative use of the websites or their content, download or copy account information, use any data mining, robots or similar data gathering and extraction tools without the explicit written consent of the company. Any unauthorised use terminates any permissions granted.



### 13. NOMINATED PRODUCTS

In the event that any of the Products to be supplied under the Contract are Nominated Products, the Customer shall be required to provide the Company with complete and accurate information regarding the Nominated Product and the supplier thereof, in the format prescribed by the Company from time to time, and the following additional provisions shall apply:

- 13.1. The Customer shall be responsible for agreeing directly with the suppliers of Nominated Products all matters concerning Nominated Products including the specification and delivery conditions. The Company shall have no responsibility for the selection of any supplier of Nominated Products or for their performance. The Customer shall provide the Company with full details of all suppliers of Nominated Products in order for the Company to fulfil its obligations under the Contract. The Customer shall be responsible for forecasting its requirements for any new Nominated Products for the first 6 weeks.
- 13.2. Where the Company has agreed to purchase Nominated Products, the Company shall purchase Nominated Products from suppliers at the price agreed with the suppliers by the Customer and on the basis of the Company's procurement terms from time to time in force. For the avoidance of doubt, the Company will not be liable to pay the nominated supplier for Nominated Products unless and until it has received full payment in cleared funds from the Customer in respect of such Nominated Products. Where the Customer has made only part payment of total amounts invoiced by the Company, monies received will be allocated first to the payment of the Company's wholesale product debt and then to Nominated Product stock ordered on the Customer's behalf.
- 13.3. The Customer undertakes to complete and sign, and procure that its nominated suppliers complete and sign, a New Supplier Form which incorporates the Company's procurement terms and payment terms.
- 13.4. For the avoidance of doubt, in no circumstance will the Company be liable to pay the supplier of Nominated Products for such Nominated Products except as set out in Clause 13.2 above, including, but not limited to, where a deterioration of the Customer's financial situation or its insolvency leaves it unable pay its invoices in full to the Company and the Company is holding stock of Nominated Products. Where the Customer has failed to order or pay for Nominated Product stock for any reason and the Company is holding stock of Nominated Products, the supplier will be offered the opportunity to collect the Nominated Product stock from the Company, or alternatively will instruct the Company to dispose of such Nominated Products at the supplier's expense.
- 13.5. Subject to the Customer accurately providing all the required information about the Nominated Product and the supplier thereof to the Company, the Company shall endeavour to set up new Nominated Products within 28 days of receipt of all such complete information. For the avoidance of doubt, once set up the Company shall be able to place orders with the nominated supplier and begin to arrange for stock to be brought into its network. The Customer shall provide the Company with a price file for each supplier of a Nominated Product showing the relevant cost. Any variation to the cost price of Nominated Products will only be accepted by the Company on submission of an agreed price change form from the Customer and with a minimum of 14 days' notice.
- 13.6. If the Customer no longer requires any particular Nominated Product (a "**Delisted Product**"), it shall give the Company not less than 14 days' notice of the Delisted Date.
- 13.7. The Company shall be responsible for checking that all Nominated Products conform with all applicable laws, including, but not limited to, the Food Safety Act 1990 (as amended by the Food Standards Act, 1999) and with internal Company technical

and quality standards. The Company may refuse to list, or remove from its network, any Nominated Product at any time by providing notice in writing to the Customer.

- 13.8. The Customer shall be responsible for ensuring that the Nominated Products are sourced from reputable suppliers who have achieved a nationally recognised product safety standard or have been formally assessed by the Customer as acceptable on product safety, legality, and integrity grounds.
- 13.9. The Customer shall procure the agreement of the supplier of Nominated Products to the document 'KFF Code of Practice for Suppliers' (the Company's guide for suppliers).
- 13.10. The Company shall be entitled to charge the Customer in respect of the stocking and delivery of the Nominated Products. The Company shall be entitled to adjust any such on-cost charge (or "case rate") at its sole discretion.
- 13.11. Unless otherwise agreed, the Company shall arrange for Nominated Products to be delivered into its depots for onward delivery by the Company to the Customer. The Company shall carry out checks and quality control inspections in relation to Nominated Products upon delivery. The Company may reject any Nominated Products which do not comply with applicable laws or which do not meet its technical or quality standards.
- 13.12. The Customer acknowledges and agrees that the inability of the Company to perform any part of the Contract by reason of the performance deficiencies of any of the suppliers of Nominated Products shall not be deemed to be a breach of the Contract by the Company, and that, in such circumstances, the Customer will pursue its remedies directly against the defaulting supplier of the Nominated Product and no such performance deficiencies shall be counted in the calculation of any service levels agreed between the Company and the Customer.
- 13.13. The Company shall not be responsible for any costs resulting from shelf life expiry, waste, discontinuance of stock, or unordered stock of Nominated Products. In any of these events, the Company may charge the Customer the full selling price of such Nominated Products in addition to any disposal or return costs. The Customer will indemnify and hold harmless the Company in respect of any liability, claims, or losses arising in connection with Nominated Product stock held by the Company, including for the avoidance of doubt, any claim by a nominated supplier in relation to payment for such Nominated Product stock.
- 13.14. If applicable, the nominated suppliers shall be responsible for the Company's consolidation charges payable in respect of the storage, handling and picking of the Nominated Products whilst in the Company's consignment warehouse.
- 13.15. The Company may in its sole discretion delist any Nominated Product where the Customer's requirement for such Product falls below 20 cases per week.
- 13.16. The Company reserves the right to add any Nominated Product as a Listed Product to its wholesale range and release it for sale to its wholesale customer base, provided that such Nominated Product is not branded with any name, trading style or logo belonging to the Customer.

#### **14. FORCE MAJEURE**

"**Force Majeure**" means an event beyond the reasonable control of the Company and includes, without limitation, events that may arise due to the departure of the United Kingdom or part thereof from the European Union ("**Brexit**") or out of negotiations between the United Kingdom and the European Union regarding the same, which, whilst they may or may not have been reasonably foreseeable, could not have been reasonably avoided; any failure or delay on the part of a supplier to supply Products and/or services; acts of God; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion; terrorist activity; pandemic; local or national

emergency (including an emergency service to a hospital); sabotage or riots; industrial action; floods, fires, explosions or other catastrophes; closure of motorways or other roads, or unusually severe traffic congestion (including closure or delay at borders), leaving no reasonable alternative route; unusually severe weather conditions; loss of power or telecommunications systems; or computer failure or breakdown (which could not have been reasonably avoided).

The Company reserves the right to defer the date of delivery or reduce the volume of Products ordered by the Customer or to cancel the Contract without liability to the Customer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to a Force Majeure Event. The Company may make adjustments to the pricing and/or other financial terms relating to supply of the Products, to take into account the financial impact of any Force Majeure Event on the Company.

## **15. CONFIDENTIALITY**

- 15.1. The Customer undertakes that it shall not at any time disclose any confidential information concerning the business, affairs, customers, suppliers, pricing or other financial information of the Company to any third party whatsoever.
- 15.2. The Customer may disclose the Company's confidential information (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations to the Company under the Contract, provided that such employees, officers, representatives and advisors to whom the Customer discloses such information comply in full with this Condition; and (ii) as may be required by law, court order or any government or regulatory authority, provided that the Customer gives as much advance notice of such disclosure to the Company, as possible.
- 15.3. The Customer shall not use the Company's confidential information for any purpose other than to perform its obligations under the Contract.
- 15.4. Where the Customer purchases from the Company via a buying group or consortia ("**Buying Group**"), the Customer consents to the Company supplying to the Buying Group information relating to the Customer's purchases, its account and payment history, or any other information requested by the Buying Group in connection with the Customer's trading relationship with the Company. The Customer also consents to the Company sharing confidential information with other entities within the Company's group, including parents, subsidiaries or affiliates of the Company.

## **16. DATA PROTECTION**

- 16.1. "**Data Protection Legislation**" shall mean the UK Data Protection Legislation and any other European Union legislation (including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018) and all other applicable legislation and regulatory requirements relating to Personal Data in force from time to time.
- 16.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. The Company will comply with its Privacy Policy which is published on its website.
- 16.3. The parties acknowledge that for the purposes of the Data Protection Legislation, both parties may be a Controller and/or a Processor of Personal Data and both parties agree to only process Personal Data on the instructions of the Controller (as agreed from time to time) in the pursuance of, and to the extent and duration of, the Company supplying Products and/or services to the Customer.
- 16.4. The Customer will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the Company.
- 16.5. The Customer consents to the Company appointing any third-party processor of Personal Data under the Contract. The Company confirms that it has entered or, as

the case may be, will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this Condition 166.

## **17. ANTI-FACILITATION OF TAX AVOIDANCE**

17.1. The Customer shall:

17.1.1. not engage in any activity, practice or conduct which would constitute either:

17.1.1.1. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

17.1.1.2. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

17.1.2. have and shall maintain in place throughout the term of the Contract such measures as are reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Customer); and

17.1.3. promptly report to the Company any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract;

17.2. The Customer shall ensure that any person associated with the Customer who is performing services in connection with the Contract does so in compliance with obligations equivalent to those imposed on the Customer in Condition 17.1 ("**Relevant Tax Evasion Terms**"). The Customer shall be responsible for the observance and performance by such persons of the Relevant Tax Evasion Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Tax Evasion Terms.

17.3. For the purposes of Condition 17.1, the meaning of reasonable prevention procedures shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

## **18. ADDITIONAL TERMS**

18.1. Failure or delay on the part of the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.2. If any provision of the Contract is found by any Court, tribunal or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3. The Company may make available certain promotions from time to time. The Customer shall be bound by any additional terms that apply to any promotions and the Customer shall be responsible for ensuring the Customer contact registered to receive the promotion is correct and updated accordingly from time to time.

18.4. Where available, the Company may provide the Customer with an online account, through which the Customer will be able to place and manage its orders and to find out about relevant promotions that are available to the Customer. This online account will allow the Customer to be better informed about the status of orders

and, over time, the Company may add other features to help its Customers to manage contact details, account information and to track its orders. Order confirmations will be e-mailed to the Customer when orders are placed (or amendments to the Order are agreed). Where the Customer has an online account, it is the responsibility of the Customer to ensure its account details remain up to date and accurate. Access to the Customer's online account will be subject to the Company's website terms of use and acceptable use policy. The Company reserves the right to refuse the service, terminate accounts or remove or edit content or functionality at any time.

- 18.5. Telephone calls (inbound and outbound) and email correspondence with the Company may be recorded or monitored. By using or accepting such communication methods, the Customer agrees to the recording or monitoring of the same for quality purposes and training.
- 18.6. The Company, but not the Customer, may assign its rights and obligations under the Contract.
- 18.7. Any written communication given pursuant to the Contract must be sent by pre-paid first class post to the registered office of the addressee or such other address as may have been notified in writing and shall be deemed to have been received by the addressee two days after the date of posting.
- 18.8. The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 18.9. The Contract shall be governed by the laws of England and the Company and the Customer agree to submit to the exclusive jurisdiction of the English Courts.
- 18.10. If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.
- 18.11. The signature on behalf of a Customer who is a limited company by any person purporting to sign with the Customer's authority shall bind the Customer and the Customer shall be liable to comply with the terms of the Contract.
- 18.12. The Customer shall be liable to comply with the terms of the Contract and pay for any Products which are ordered using its Customer account number.
- 18.13. The Company reserves the right to amend these Terms and Conditions from time to time by posting updated versions on its website.