



Dairy Partners Limited

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Company Registration 2900999

A reference to "**Company**" is a reference to Dairy Partners Limited, a company incorporated and registered in England and Wales with company number 02900999 whose registered address is Brunel Way, Stroudwater Business Park, Oldends Lane Stonehouse, Gloucestershire, GL10 3SX. A reference to the "**Buyer**" is a reference to you. The Buyer's attention is drawn in particular to the provisions of clause 13 and 17.

IT IS HEREBY AGREED

1. Interpretation

The definitions and rules of interpretation in this clause apply in these Conditions.

1.1 Definitions:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with these Conditions.
"Contract"	the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
"Credit"	has the meaning given in clause 5.9.
"Delivery Note"	a document produced by the Company or the appointed carrier of the relevant Goods to the Buyer, or its agent, at the Delivery Point that shows the type and quantity of the Goods.
"Delivery Point"	the Buyer's premises or such other location as the Buyer specifies on the Order and which has been accepted by the Company in the Order Confirmation.
"Expenses"	any out-of-pocket costs incurred by the Company in fulfilling an Order, including (without limitation): <ul style="list-style-type: none">(a) postage, packaging, carriage, freight, and handling charges;(b) insurance;(c) currency conversion and banking charges applicable to the payment method used;(d) value added tax or any other applicable sales tax in the country in which the Company is resident; and(e) any customs, import or other duties charged in respect of the sale and importation of Goods into the country in which the Buyer is resident, or the Delivery Point is located.
"Goods"	the goods (or any part of them) set out in the Order.
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods.
"Invoice"	an invoice raised by the Company in accordance with clause 7.4.
"Order"	the Buyer's order for the Goods, whether set out in the Buyer's purchase order form, in the Buyer's written acceptance of the Quotation or otherwise agreed by the Company in writing in accordance with clause 3.
"Order Confirmation"	an order confirmation document sent by the Company to the Buyer, agreeing to fulfil the Order.
"Price"	the price of the Goods as defined in clause 7.2, and varied from time to time in accordance with clause 7.3.
"Quotation"	the quotation provided to the Buyer by the Company in respect of the Goods stating the price of the Goods, including any quotation provided by the Company by email.

"Specification" the specification of the Goods that is agreed in writing by the Company.

- 1.2 Reference to a clause or paragraph is to a clause or paragraph of or to these Conditions unless the context requires otherwise.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to a **person** includes an incorporated or unincorporated body.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Unless the context otherwise requires, the words **including and include** and words of similar effect shall not be deemed to limit the general effect of the words which precede them.
- 1.8 The headings in these Conditions are for ease of reference only and shall not affect its construction or interpretation.
- 1.9 a reference to writing or written includes faxes and emails.

2. **Sale of the Goods**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Subject to clause 3.3 and subject to the provisions of these Conditions, the Buyer shall buy such quantities of the Goods as may be ordered by the Buyer from time to time.
- 2.3 The Buyer agrees that no contract shall be formed between the Company and the Buyer for the supply of Goods unless these Conditions are incorporated into that contract. These Conditions shall apply to all future arrangements between the parties for the Company to supply and the Buyer to buy goods unless the parties agree otherwise in writing.

3. **Order process**

- 3.1 When the Buyer wishes to place an order for Goods, it shall send an Order to the Company.
- 3.2 An Order shall be treated as an offer by the Buyer to contract with the Company in accordance with these Conditions, but shall not be binding on the Buyer until accepted by the Company in accordance with clause 3.3. The Company may, at its sole discretion, accept amendments to an Order after acceptance.
- 3.3 The Company shall, at its discretion, accept the Order using an Order Confirmation and such Order Confirmation shall be treated as acceptance of the Buyer's Order at which point the Contract shall come into existence.
- 3.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 3.5 Any samples, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, website or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 3.6 A Quotation for the Goods given by the Company shall not constitute an offer.
- 3.7 A Quotation is subject to withdrawal by the Company at any time before an order is confirmed by the Company and shall only be valid for a period of 7 calendar days from its date of issue.
- 3.8 The Company shall arrange delivery of the Goods in accordance with the Buyer's reasonable instructions on the Order and the provisions of these Conditions, provided that the Buyer shall be liable to pay for all Expenses incurred by the Company in complying with such instructions. Such Expenses shall be included on the Invoice for the relevant Goods.

4. **Specification of the Goods**

- 4.1 Subject always to clause 4.3, the Company warrants that all Goods sold by the Company to the Buyer pursuant to these Conditions will conform in all material respects to the Specification ("**Warranty**"). All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Conditions are excluded from these Conditions to the fullest extent permitted by law.
- 4.2 Subject to the remaining provisions of this clause 4, the Buyer shall be entitled to reject any quantity of the Goods which do not comply with the Warranty, provided that any purported rejection is made no later than 3 days from the date of delivery in accordance with clause 5.5.
- 4.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 4.3 shall survive termination of the Contract.
- 4.4 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 4.5 The Buyer must not obscure, remove, conceal or otherwise interfere with any markings or other indication of course or origin on any Goods or their labelling, packaging or otherwise.

5. Delivery of the Goods

- 5.1 The Company will have fulfilled its contractual obligations in respect of each delivery provided that the quantity actually delivered is no greater than 5% more or less than the quantity specified on the Order. The Buyer shall pay for the actual quantity delivered.
- 5.2 Delivery of the Goods shall take place on the completion of unloading of the Goods at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Buyer shall be at the Company's sole discretion and the Buyer shall be liable for any additional Expenses incurred by the Company as a result of such change. The Company shall arrange for suitable transport to the Delivery Point. On delivery, the Company (or its appointed carrier) shall provide the Buyer with a Delivery Note.
- 5.3 Delivery or performance dates in relation to the supply by the Company of Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Goods. The Company shall not be liable for any delay in delivery of the Goods that is caused by the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 The Company may effect delivery in one or more instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.5 The Buyer must check and sign any delivery document in respect of the Goods as directed by the Company or an agent of the Company. Such signed delivery document shall be proof of delivery of the Goods.
- 5.6 The Buyer shall, within 3 days of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to the Company on account of any defect by reason of which the Buyer alleges that the Goods delivered do not comply with the Warranty and which was apparent on reasonable inspection.
- 5.7 If the Buyer fails to give notice as specified in clause 5.6 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty and, accordingly, the Buyer shall be deemed to have accepted the delivery of the Goods in question and the Company shall have no liability to the Buyer with respect to that delivery (except in relation to liability for any latent defects).
- 5.8 If the Buyer alleges that any Goods are defective, the Company may collect the relevant Goods (unaltered and unrepaired) for inspection as soon as possible and at the Company's own risk and expense.
- 5.9 If the Buyer rejects any delivery of the Goods which do not comply with the Warranty, the Company shall, within 7 days of the Company accepting that the Goods do not comply with the Warranty:
- 5.9.1 confirm it will supply replacement Goods which comply with the Warranty, in which event the Company shall be deemed not to be in breach of these Conditions or have any liability to the Buyer for the rejected Goods. Such replacement shall be provided to the Buyer in a reasonable time; or
- 5.9.2 notify the Buyer that it is unable to supply replacement Goods, in which case the Company shall grant to the Buyer, at its sole discretion, a credit equal to the value of the Goods which the Company agrees do not comply with the Warranty ("**Credit**") or shall refund the price of the defective Goods.
- 5.10 The Company's reasonable decision as to whether the Goods comply with the Specification shall be final.
- 5.11 The Company shall not be liable for the Goods' failure to comply with the Warranty in any of the following events:
- 5.11.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.6;
- 5.11.2 the defect arises because the Buyer, having regard for the time it will take for the Goods to reach the end customer, failed to follow the Company's oral or written instructions as to the storage, stock rotation, commissioning, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.11.3 the defect arises as a result of the Company following any drawing, design, Specification or any other oral or written instructions supplied by the Buyer;
- 5.11.4 the Buyer alters or repairs such Goods without the written consent of the Company;
- 5.11.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.11.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.12 The Buyer must notify the Company, in writing, of any condemnations (if there is recognised to be an inherent fault) or seizures for whatever reason and deliver full particulars to the Company within five days of the date of the condemnation or seizure supported by certificates signed by a recognised Public Health Official or Official of a recognised Regulatory Body giving full relevant details including any relevant time-limits or other conditions and the reason for any seizure.
- 5.13 In the case of Goods delivered in sealed containers, the Buyer must ensure that:
- 5.13.1 the containers and the seal numbers and quantities correspond with those shown on the delivery note in respect of the associated Order;
- 5.13.2 the seals are intact and that the Buyer notifies the Company without delay of any discrepancy or broken seal.

- 5.14 Except as provided in this clause 5 the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the Warranty.
- 5.15 Subject to any warranty imposed by statute, the Company does not warrant that any Goods supplied:
- 5.15.1 where such Delivery Point is located in the UK, may lawfully be supplied or offered for sale outside the UK; or
- 5.15.2 are suitable for mixing, blending or compounding with other goods unless the Buyer has made full disclosure of all facts relating to the use to which the Goods are to be put and of any particular standards, requirements or specifications to which those other Goods are expected to conform and such specifications are agreed, in writing, by the Company.
- The Buyer will indemnify the Company against all claims and liability arising through the Buyer's failure to make such disclosure.
- 5.16 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.17 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 5.18 The Buyer agrees not to make any representations or warranties or give any guarantees to third parties about the Goods.
- 5.19 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.20 If the Buyer fails to accept delivery of the Goods within three Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract:
- 5.20.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
- 5.20.2 the Company shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).
- 5.21 If ten Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

6. Import licences

The Buyer is responsible for obtaining, at its own cost, such import licences, export licences, tariffs and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Buyer shall make those licences, tariffs and consents available to the Company prior to the relevant shipment if requested by the Company.

7. Prices and payment

- 7.1 The Buyer shall pay the Company for the Goods in accordance with the provisions of this clause 7.
- 7.2 The price of the Goods shall be the price set out in the Order Confirmation (the "Price").
- 7.3 The Price may be varied from time to time by the Company on giving notice to the Buyer before the delivery date.
- 7.4 The Company shall invoice the Buyer on or at any time after the completion of delivery. Such invoices will include the Price and all related Expenses (but less any Credits due to the Buyer as agreed by the Company).
- 7.5 The Buyer shall pay to the Company the total amount of each Invoice in Euros, Dollars or Sterling as agreed, in writing, by the Company by telegraphic transfer to such bank account nominated in writing by the Company. The Buyer shall pay the Invoice in full and in cleared funds by the due date as stated on the Invoice or if no date is stated, within 15 Business Days after the date of the relevant Invoice, notwithstanding that delivery may not have taken place and that property in the Goods has not passed to the Buyer.
- 7.6 All amounts of money referred to in the Contract shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to the Company, the Buyer shall increase the sum it pays to the Company by the amount necessary to leave the Company with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 7.7 All amounts due to the Company under the Contract shall become due immediately if the Contract is terminated or novated despite any other provision.
- 7.8 The time for payment shall be of the essence and no payment shall be deemed to have been made until the Company has received payment in cleared funds.
- 7.9 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then, without limiting the Company's remedies under these Conditions, the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base in the UK rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 7.10 Without prejudice to any other right or remedy, the Company reserves the right to suspend the delivery of further Goods immediately if:

- 7.10.1 the Buyer fails to settle any invoice in accordance with clause 7.5;
- 7.10.2 there is any outstanding liability owing to the Company by the Buyer; and / or
- 7.10.3 in the reasonable opinion of the Company, the Buyer will not be able to meet, or is unlikely to be able to meet, any existing or future commitments to the Company.

If the Company suspends the delivery of Goods to the Buyer for whatever reason, all sums invoiced, as at the date the Company notifies the Buyer of such suspension, shall be due for immediate payment.

- 7.11 In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 7.12 All amounts due under the Contract shall be paid by the Buyer to the Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Title and risk

- 8.1 Risk in and responsibility for the Goods ("**Risk**") shall pass to the Buyer at such point as set out in the Order Confirmation or, in the absence of such, once they are unloaded from the vessel or aircraft at the destination port in the Country of the Delivery Point. In the event that the Delivery Point is in Great Britain, Risk shall pass on the completion of the delivery.
- 8.2 Subject to clause 8.4, ownership of the Goods shall not pass to the Buyer until the Company has received payment in full of all monies owed by the Buyer to the Company.
- 8.3 Until ownership of the Goods passes to the Buyer, the Buyer shall hold the Goods on the following terms:
 - 8.3.1 the Goods shall be stored separately from other goods held by the Buyer and shall be clearly identifiable as the property of the Company;
 - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 8.3.3 give the Company such information relating to the Goods as the Company may require from time to time;
 - 8.3.4 the Goods shall not be mixed with other goods or altered in any way;
 - 8.3.5 the Goods shall be adequately stored and maintained in a satisfactory condition; and
 - 8.3.6 the Goods shall be insured for an amount at least equal to its Price and any proceeds of the insurance policy shall be held on trust for the Company in a separate account in the joint names of the Company and the Buyer. The Buyer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. The Buyer shall account to the Company for the proceeds accordingly and make good any shortfall in the amount due to the Company.
- 8.4 The Buyer may resell (but may not deal in any other way with) the Goods to a third party and pass good title to that third party on the following terms:
 - 8.4.1 the sale is in the ordinary course of the Buyer's business; and
 - 8.4.2 the Buyer holds the proceeds of any resale on trust for the Company in a separate account in the joint names of the Company and the Buyer and does not mix them with any other money or pay the proceeds into an overdrawn bank account.The Buyer shall account to the Company for the proceeds accordingly and shall make good any shortfall in the amount due to the Company.
- 8.5 The Buyer shall lose its rights to possession and resale of the Goods if:
 - 8.5.1 the Buyer becomes subject to any of the events in clause 12.2.2 to clause 12.2.5 and clause 12.2.7 to clause 12.2.9;
 - 8.5.2 the Contract terminates and the Buyer does not pay all outstanding amounts under the Contract within 30 days; or
 - 8.5.3 the Buyer suffers any legal or equitable execution to be levied on its property.
- 8.6 The Buyer grants to the Company an irrevocable licence for the Company, its agents and employees to enter any premises where the goods of the Buyer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.
- 8.7 The Buyer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this clause 8 at the request of the Company.

9. Changes

- 9.1 The Company may, immediately on giving written notice to the Buyer:
 - 9.1.1 exclude from the Contract one or more of the Goods available to the Buyer as it thinks fit;
 - 9.1.2 elect to alter the Specification of any of the Goods, provided that the alteration does not materially adversely affect the quality or value of the Goods; or
 - 9.1.3 include any modified version of the Goods, additional goods or replacements for the Goods.
- 9.2 The Company may, on giving written notice to the Buyer, elect to alter the Specification of any of the Goods otherwise than in accordance with clause 9.1.2. Where the Buyer has placed an Order and the Company has accepted that Order using an Order Confirmation, and the Specification of any of the Goods contained in that Order are varied in accordance with this clause 9.2, the Buyer may cancel the part of the Order that relates to the varied Goods only.
- 9.3 The Company may, on giving written notice to the Buyer, exclude from the Contract one or more of the Goods as it thinks fit otherwise than in accordance with clause 9.1.1. Where the Buyer has placed an Order and the Company has accepted that Order using an Order

Confirmation, and any of the Goods contained in that Order are excluded from the Contract, the Order shall automatically be varied to exclude such excluded Goods.

10. Intellectual property rights

- 10.1 The Buyer acknowledges that:
- 10.1.1 the Intellectual Property Rights are the Company's (or its licensor's) property;
 - 10.1.2 nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights. The Company asserts its full rights to control the use of its trade marks within the European Economic Area and worldwide and the Buyer shall assist the Company as required in preventing parallel importers from diluting the Company's rights; and
 - 10.1.3 any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Company or any other owner of the trade marks from time to time.
- 10.2 The Buyer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a previously agreed by the Company in writing.
- 10.3 The Buyer shall not use (other than pursuant to the Conditions) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Company or any associated company of Company owns or claims rights in anywhere in the world.
- 10.4 If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Company's reasonable opinion, such an allegation is likely to be made, the Company may at its option and its own cost:
- 10.4.1 modify or replace the Goods in order to avoid the infringement;
 - 10.4.2 procure for the Buyer the right to continue using the Goods; or
 - 10.4.3 repurchase the Goods at the price paid by the Buyer, less depreciation at the rate the Company applies to its own Goods.
- 10.5 The Buyer shall promptly and fully notify the Company of:
- 10.5.1 any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Buyer's notice; and
 - 10.5.2 any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods infringes the rights of any person.
- 10.6 The Buyer agrees (at the Company's request and expense) to do all such things as may be reasonably required to assist the Company in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 10.5.
- 10.7 In the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of any Intellectual Property Right connected with the Goods, the Company shall defend the Buyer at the Company's expense, subject to:
- 10.7.1 the Buyer promptly notifying the Company in writing of any such claim, proceeding or suit; and
 - 10.7.2 the Company being given sole control of the defence of the claim, proceeding or suit,
- and provided that the Company shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except the Company or its authorised representative, or out of use or combination of the Goods with Goods or third party materials not specified or expressly approved in advance in writing by the Company, or where the claim, proceeding or suit arises from the Company's adherence to the Buyer's requested changes to the Specification or from infringing items of the Buyer's origin, design or selection.
- 10.8 The Company shall reimburse the Buyer with an amount equal to any reasonable cost, expense or legal fees incurred at the Company's written request or authorisation and shall indemnify the Buyer against any liability assessed against the Buyer by final judgement on account of an infringement described in clause 10.7.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12. Duration and termination

- 12.1 The Contract shall commence when the Company issues written acceptance of the Order and shall continue until either party serves not less than 1 months' written notice on the other, or the Contract is terminated in accordance with these terms.
- 12.2 The Company may terminate the Contract by giving written notice to the Buyer if any of the following events occurs:
- 12.2.1 the Buyer commits a material breach of these Conditions which (in the case of a breach capable of remedy) has not been remedied within 7 days of the receipt by the Company of a notice specifying the breach and requiring its remedy;
 - 12.2.2 the Buyer commits the same or substantially similar breaches of its obligations under these Conditions more than 2 times within any period of 6 consecutive months;
 - 12.2.3 a winding-up order or bankruptcy order is made against the Buyer;
 - 12.2.4 the Buyer passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the Company);
 - 12.2.5 the Buyer has appointed to it an administrator or an administrative receiver;
 - 12.2.6 being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners;
 - 12.2.7 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Buyer's assets;
 - 12.2.8 the Buyer ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.2.9 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into;
 - 12.2.10 the Buyer ceases, or threatens to cease, to carry on business;
 - 12.2.11 any event analogous to those described in clause 12.2.3 to clause 12.2.9 occurs in relation to the Buyer in any jurisdiction in which that other party is incorporated, resident or carries on business; or
 - 12.2.12 if the Company considers it appropriate to do so.
- 12.3 Following the termination of the Contract for any reason whatsoever, the Company shall be entitled (at its option) to cancel any Orders which have not yet been delivered.
- 12.4 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. Brexit trigger, renegotiation and termination

- 13.1 For the purposes of this clause 13, a "**Brexit Trigger Event**" means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:
- 13.1.1 an adverse impact the Company's ability to perform the agreement in accordance with its terms and the law (as determined by the Company);
 - 13.1.2 an increase in the costs incurred by the Company in performing the agreement of at least 5% since the price for the Goods was last agreed; and / or
 - 13.1.3 the price of the Goods under the Contract is at least 10% lower than the market value for similar Goods.
- 13.2 If a Brexit Trigger Event occurs, the Company may:
- 13.2.1 require the Buyer to negotiate in good faith any amendment to the Contract to alleviate the Brexit Trigger Event; and
 - 13.2.2 if no such amendment is made to the Contract within 30 days, terminate the Contract by giving the Buyer not less than 5 days written notice.
- 13.3 Save as expressly provided in this clause 13, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of the Contract, the provisions of this clause shall prevail.

14. Force majeure

Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 60 days, the party not affected may terminate the Contract by giving written notice to the affected party.

15. Entire agreement

- 15.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16. Waiver of rights based on misrepresentation

16.1 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any oral or written statement made by the other or by its legal advisers (whether made carelessly or not) that is not set out or referred to in these Conditions (or for breach of any warranty given by the other not so set out or referred to), unless such statement or warranty was made or given fraudulently.

16.2 Each party unconditionally waives any rights it may have to seek to rescind these Conditions on the basis of any statement made by the other (whether made carelessly or not) unless such statement was made fraudulently.

17. Limitation of liability

17.1 The Company's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to the Contract shall be limited to an amount equal to the Price of the Goods actually received by the Company at the date of the claim to which the claim relates.

17.2 The Company shall not be liable to the Buyer for:

17.2.1 any indirect, special or consequential loss or damage;

17.2.2 loss of data or other equipment or property;

17.2.3 economic loss or damage;

17.2.4 incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

17.2.5 any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if the Company is advised in advance of the possibility of any such losses or damages.

17.3 The Company shall not be liable for any losses arising from the Buyer's subsequent use or misuse of the Goods including (without limitation):

17.3.1 fair wear and tear;

17.3.2 wilful damage;

17.3.3 the Buyer's negligence, or that of its agents or employees, or any failure to follow the Company's instructions as to use of the Goods;

17.3.4 abnormal working conditions beyond those referred to in the Specification; and

17.3.5 any alteration or repair of the Goods by any manufacturing process or otherwise, save for any latent defect which means that the Goods did not comply with the Specification.

17.4 The Company is not liable for a defect in the Goods unless it is notified to the Company within 3 days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within 1 month of the date of delivery.

17.5 The Company is not liable for:

17.5.1 non-delivery, unless the Buyer notifies the Company of the claim within 3 days of the date of scheduled date of delivery; or

17.5.2 shortages in the quantity of Goods delivered in excess of those permitted by clause 5.1, unless the Buyer notifies the Company of a claim within 3 days of receipt of the Goods; or

17.5.3 damage to or loss of all or part of the Goods in transit (where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company), unless the Buyer notifies the Company within 3 days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

17.6 The Buyer acknowledges and agrees that the Price reflects the limitations of liability contained in the Contract.

18. Assignment

The Buyer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions.

19. Dispute Resolution

19.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in these Conditions, the parties shall follow the procedure set out in this clause:

19.1.1 The Company and the Buyer will negotiate in good faith for 5 working days (from the date on which one party notifies the other of a dispute) to try to resolve any dispute arising on or in connection with the Contract.

19.1.2 If the parties fail to resolve the dispute within that time either party may refer it to an independent expert (acting as an expert and not an arbitrator) agreed between the parties or, in default of agreement within 14 days, appointed at the request of either party by the President for the time being of the Law Society of England and Wales whose decision will bind the parties. His fees will be borne equally if he does not determine otherwise.

20. Data Protection

- 20.1 The Company may use data relating to the Customer which is collected under these Conditions or otherwise for the purposes of performing its obligations under a contract and for administration, risk assessment, marketing and credit checking purposes. The Company may disclose Customer data to its agents, dealers and service providers for these purposes.
- 20.2 The Company may also share Customer data with companies within the Company's group.
- 20.3 Where Goods are sold to the Customer on a credit account, the Company may sell, assign or transfer its interest in any debt owed by the Customer to the Company to any third party. The Company may carry out searches in the files of credit reference agencies that will record the search and may also disclose Customer data to any assignee or transferee and their professional advisers.
- 20.4 The Customer has the right, subject to certain exemptions, to obtain a copy of any personal data held by the Company and to correct any inaccuracies in such personal data.

21. Cumulative remedies

The rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

22. No partnership or agency

- 22.1 Nothing in these Conditions are intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. Costs

Except as expressly provided in these Conditions, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of these Conditions and any documents referred to in it.

24. Severance

- 24.1 If any provision or part-provision of these Conditions are or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.
- 24.2 If one party gives notice to the other of the possibility that any provision or part-provision of these Conditions are invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. Counterparts

- 25.1 These Conditions may be executed in any number of counterparts and by the parties on separate counterparts but shall not be effective until each party has executed at least one counterpart.
- 25.2 Each counterpart, when executed, shall be an original, but all counterparts shall together constitute one and the same instrument.

26. Amendment and waiver

- 26.1 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 26.2 No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27. Third party rights

No person who is not party to the Contract shall have any right to enforce any term of the Contract.

28. Notices

- 28.1 Any notice or other communication given to a party under or in connection with these Conditions shall be in writing and shall be:
- 28.1.1 by recorded delivery at its registered office (if a company) or its principal place of business (in any other case);
 - 28.1.2 sent by fax to its main fax number; or
 - 28.1.3 sent by email to the most recent email address as agreed between the parties.
- 28.2 Any notice or communication shall be deemed to have been received:
- 28.2.1 if sent by recorded delivery at the time recorded by the delivery service; and
 - 28.2.2 if sent by fax or e-mail, at 9.00 am on the next Business Day after transmission.
- 28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. Survival of obligations

Any of the provisions of these Conditions that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.

30. Governing law and jurisdiction

- 30.1 These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to these Conditions. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall not apply to these Conditions.
- 30.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or its subject matter or formation.
- 30.3 Each party irrevocably consents to any process in any legal action or proceedings under clause 30.1 above being served on it in accordance with the provisions of these Conditions relating to service of notices. Nothing contained in these Conditions shall affect the right to serve process in any other manner permitted by law.
- 30.4 Nothing in this clause 30 shall limit the right of the Company to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Company from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

31. Language

- 31.1 These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language version shall prevail.
- 31.2 Any notice given under or in connection with these Conditions shall be in the English language. All other documents provided under or in connection with these Conditions shall be in the English language or accompanied by a certified English translation.
- 31.3 The English language version of these Conditions and any notice or other document relating to these Conditions shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.

Signed _____

Company _____

Date _____