

1. INTERPRETATION

In these conditions:

1.1 **"BUSINESS DAY"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; **"CONDITIONS"** means these standard terms and conditions; **"CONTRACT"** means the contract between KP and the Customer for the sale and purchase of Goods in accordance with these Conditions; **"CUSTOMER"** means the person who accepts a quotation of KP for the sale of Goods or whose order for the Goods is accepted by KP; **"FORCE MAJEURE EVENT"** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors; **"GOODS"** means the goods (including any instrument of the goods) which KP is to supply pursuant to any Order; **"INTELLECTUAL PROPERTY RIGHTS"** means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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; **"KP"** means KP Snacks Limited (registered number 8314506); **"MARKS"** means KP's trade name, brand names and logos; **"ORDER"** means the Customer's order for the Goods, as set out in the Customer's written acceptance of KP's quotation or in the Customer's purchase order, and **"YEAR"** means a period of 12 consecutive months starting on the date the Contract comes into existence in accordance with Clause 2.2

2. BASIS OF THE AGREEMENT

2.1 KP shall sell and the Customer shall purchase the Goods in accordance with the Contract, which shall apply to the exclusion of any other terms and conditions including those that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. KP's employees or agents are not authorised to make any representations or give any advice or recommendations concerning the Goods except where confirmed by KP in writing.

2.2 The Order constitutes an offer to purchase the Goods in accordance with these Conditions. The Customer shall ensure the accuracy of any Order (including any specification). The Contract shall come into existence upon KP's written acceptance of an Order. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.3 Following acceptance of an Order by KP the Order may not be cancelled or modified by the Customer without the prior written consent of KP. KP reserves the right at any time to make changes in the recipe or specification of the Goods which are required to conform with product development plans, applicable food safety or other statutory or non-statutory requirements.

2.4 The acceptance of an Order and the fulfilment of a Contract by KP are at all times subject to the availability of stock.

2.5 KP reserves the right to amend the Contract if the Customer's business parameters change, for example: if the Customer acquires other retail outlets this will not count towards any growth incentive payments agreed between the parties. If the Customer disposes of retail outlets, other brands or the business undergoes other changes, the parties will meet to agree adjustments.

2.6 Notwithstanding any other provision of these Conditions, KP may propose an amendment to, or reject entirely, an Order if KP in its entire discretion decides that it would be in KP's best interests to do so. KP shall not be obliged to share its reasoning behind any decisions made by it pursuant to this Clause 2.6.

2.7 KP may, from time to time, provide a list of recommended retail prices or offer advice about the category to the Customer. At all times, the Customer shall retain absolute discretion to independently determine its own retail price and related matters connected with onward sale.

2.8 If the Customer requires KP to assist it in category management, terms of the category management agreement shall then apply.

3. TRADE INVESTMENT

3.1 At KP's absolute discretion, KP may contribute trade investment for use to promote its products. KP will inform the Customer of the trade investment if applicable from time to time.

3.2 No trade investment will occur unless the Customer has signed and returned the promotional proposal record to KP prior to commencement of any activity.

3.3 KP shall not pay the Customer any trade investment unless both parties have agreed and validated a performance compliance report.

4. PRICE OF THE GOODS

4.1.1 The price of the Goods shall be the price as at the delivery date, specified by KP. Notwithstanding the foregoing KP may, by giving notice to the Customer at any time up to seven (7) days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

4.1.2 any factor beyond KP's control (including without limitation increases in labour, materials and manufacturing costs, and increases in taxes and duties);

4.1.3 any request by the Customer to change the delivery date(s), locations/depots, quantities or any specification; or

4.1.4 any delay caused by any instructions of the Customer or failure of the Customer to give KP adequate or accurate information or instructions.

4.2 The price of the Goods is exclusive of:

4.2.1 the costs and charges of packaging, insurance and transport of the Goods, which the Customer shall pay to KP; and

4.2.2 any applicable value added tax ("VAT"), which the Customer shall pay to KP at the prevailing rate.

4.3 Pallets on which deliveries are made are the property of KP or of a third party and must be made available by the Customer for collection by KP at the Customer's premises as KP shall reasonably request. Where no pallet is available, a pallet control voucher or equivalent shall be provided to KP.

5. QUALITY

5.1 Subject to Clause 5.3, KP warrants that on delivery, the Goods shall be of satisfactory quality, materially free from defects, fit for their intended purpose held out by KP and materially match any description and/or specification provided by KP.

5.2 Subject to Clause 5.3, if:

5.2.1 the Customer gives notice in writing to KP within 7 days of delivery that some or all of the Goods do not comply with the warranty set out in Clause 5.1;

5.2.2 KP is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by KP) returns such Goods to KP's place of business at the Customer's cost.

1. KP shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full. If the Customer does not comply with this Clause 5.2, the Customer shall not be entitled to reject the Goods and KP shall have no liability for such defect.

5.3 KP shall not be liable for any Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events:

5.3.1 the defect arises because the Customer failed to follow KP's oral or written instructions as to the storage and use of the Goods or (if there are none) good trade practice regarding the same;

5.3.2 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or

5.3.3 the Goods differ from their description and any specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

5.3.4 the defect arises as a result of KP following Customer instructions and/or any specification provided by the Customer.

5.4 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.

5.5 These Conditions shall apply to any replacement Goods supplied by KP.

6. TERMS OF PAYMENT

6.1 KP shall be entitled to invoice the Customer for the price of Goods on or at any time after delivery or, upon written notice to the Customer, set off the price against any money due to the Customer by KP.

6.2 Payment for Goods in full and in cleared funds without any deductions is due and must be received by KP before the 21st day of the month following the month the invoice was dated, unless specifically agreed in advance and in writing by KP. The time of payment of the price shall be of the essence. Receipts for payment will only be issued upon request.

6.3 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding.

6.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to KP, KP shall be entitled to:

6.4.1 suspend any further deliveries; and

6.4.2 withhold payment of overriding and retrospective discounts and promotional allowances.

6.5 The parties will discuss any pricing queries and disputes within one month of the date of the invoice. If the dispute is not resolved within this timeframe the invoice will be deemed to be correct.

6.6 Payment shall fall due in accordance with Clause 6.2 and KP shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.

6.7 KP reserves the right, in its absolute discretion, to withdraw or refuse credit terms without assigning any reason therefor.

7. DELIVERY

7.1 KP shall deliver the Goods to the location set out in the Order or such other location as agreed between the parties ("**Delivery Location**") at any time after KP notifies the Customer that the Goods are ready.

7.2 The Customer shall provide all necessary delivery instructions, documents, licences, authorisations, labour and equipment to accept delivery of the Goods and enable the Goods to be safely unloaded at the Delivery Location. The Customer shall ensure that each delivery of Goods is signed for by an authorised representative.

7.3 The parties may agree that the Customer shall collect the Goods from KP's premises or such other location as may be advised by KP prior to delivery ("**Collection Location**"), in which case the Customer shall collect the Goods within three (3) Business Days of KP notifying the Customer that the Goods are ready.

7.4 Delivery of the Goods shall be completed:

7.4.1 in the event of delivery pursuant to Clause 7.1, on delivery of the Goods at the Delivery Location, or if KP procures a carrier to deliver the Goods, on delivery of the Goods to the carrier; or

7.4.2 in the event of delivery pursuant to Clause 7.3, on collection of the Goods by the Customer (or its nominated carrier) or if earlier, on expiry of the notice given by KP under Clause 7.3; or

7.4.3 in accordance with Clause 7.9.

7.5 Any dates quoted for delivery are approximate only and time for delivery shall not be of the essence.

7.6 KP shall not be liable for any failure to deliver the Goods or any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide KP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.7 The Customer shall not be entitled to reject the Goods if KP delivers up to and including 10% more or less than the quantity of Goods ordered.

7.8 If the Customer fails to take or accept delivery of the Goods within three (3) Business Days of KP notifying the Customer that the Goods are ready, or KP is unable to deliver them due to the Customer's breach of Clause 7.2 then delivery of the Goods shall be deemed to have been completed at 09:00 on the third Business Day after the day on which KP notified the Customer that the Goods were ready.

9. If 10 Business Days after the day on which KP notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, KP may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

8. RISK AND TITLE

8.1 Risk in the Goods shall pass to the Customer on delivery of such Goods.

8.2 Title to the Goods shall not pass to the Customer until KP has received, in cash or cleared funds, payment in full of the price of the Goods and all other goods agreed to be sold by KP to the Customer for which payment is then due. Until title in the Goods has passed to KP, the Customer shall:

8.2.1 hold the Goods on a fiduciary basis as KP's bailee;

8.2.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as KP's property;

8.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.2.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

8.2.5 notify KP immediately if it becomes subject to any of the events specified in Clause 10.1.1;

8.2.6 give KP such information relating to the Goods as KP may require from time to time; and

8.2.7 permit or procure permission for KP, its officers, employees and agents, to enter any premises of the Customer (including vehicles) of any third party where the Goods are stored, in order to satisfy itself that the Customer is complying with the obligations in Clause 8.2. and/or to recover any Goods.

8.3 Subject to Clause 8.4, the Customer may resell the Goods before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

8.3.1 it does so as principal and not as KP's agent;

8.3.2 it shall be effected in the ordinary course of the Customer's business;

8.3.3 the Customer shall hold such part of the proceeds of resale on trust for KP as is equal to the amount owed by the Customer to KP at the time of receipt of the proceeds of resale by the Customer (the "**Trust Proceeds**"); and

8.3.4 if the Goods are supplied on credit the Customer is not free to use the Trust Proceeds as it sees fit. The Customer will hold the Trust Proceeds on trust until the end of the period of credit at which time KP is entitled to call for an amount of the Trust Proceeds as is equal to the amount owed by the Customer.

8.4 If the Customer becomes subject to any of the events specified in Clause 10.1.1, KP may at any time:

8.4.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

8.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8.5 On termination of this Contract, howsoever caused, KP's rights contained in this Clause 8 shall remain in full force and effect.

9. LIABILITY

9.1 Nothing in these Conditions shall limit or exclude KP's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

9.1.2 fraud or fraudulent misrepresentation.

9.2 Subject to Clause 9.1, KP shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

9.2.1 any indirect, special or consequential loss or damage;

9.2.2 any loss of profits, data, anticipated profits, revenue, business opportunities or pure economic loss or damage (in each case whether direct or indirect); or

9.2.3 damage to goodwill (whether direct or indirect).

9.3 Subject to Clauses 9.1 and 9.2, KP's maximum liability to the Customer arising under or in connection with each Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods in such Order.

9.4 Subject to Clauses 9.1 and 9.2, the maximum aggregate liability of KP in relation to the Contract (excluding in relation to any Orders which is subject to the liability cap set out in Clause 9.3) whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the aggregate price of the Goods purchased by the Customer from KP in the Year in which the first act or omission giving rise to the liability occurs.

9.5 Consumer complaints shall be notified immediately by the Customer to KP in order for KP to deal with the complaint.

9.6 Subject to Clause 5.2, the Customer waives any right to seek redress for monetary or other claims relating to matters under or in relation to any Order or Contract or these Conditions from nine (9) months after the date of the relevant Order.

10. TERMINATION AND SUSPENSION

10.1 If the Customer:

10.1.1 makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for purposes of amalgamation or reconstruction); or an encumbrancer takes possession or a receiver or administrative receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases or threatens to cease, to carry on all or a substantial part of its business, or pay its debts; or

10.1.2 KP either reasonably apprehends that any of the events mentioned in Clause 10.1.1 is about to occur in relation to the Customer, or KP's insurers reduce or remove its credit insurance for the Customer, and notifies the Customer accordingly; or

10.1.3 fails to pay any amount due on the due date for payment and fails to pay all outstanding amounts within 14 days after being given written notice to do so,

then, without prejudice to any other right or remedy available to KP, KP shall be entitled to terminate the Contract or suspend or limit further deliveries without liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY

11.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods (including in any enhancements and modifications made by KP) and the Marks are and shall remain the sole property of KP or (as the case may be) the third party rights owner.

11.2 The Customer hereby grants KP a royalty-free, perpetual license to use any recipes and/or specifications owned by the Customer for the purposes of the Contract.

11.3 The Customer shall indemnify, keep indemnified and hold harmless KP from and against any and all liabilities, losses, damages, costs and expenses (including any, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by KP for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with KP's use of the Customer's recipe or specification.

11.4 The Customer shall not use any of KP's Intellectual Property Rights in any publicity, advertising or promotional material or otherwise which is in any way prejudicial to those rights or to KP's wider business interests. The Customer may use KP's name and logo(s) as a reference in advertising or promotional materials. Such materials must in each instance be pre-approved by KP in writing and the Customer shall immediately cease using such materials upon request by KP. KP licenses the Customer to use the Marks for such purpose.

11.5 KP may use the Customer's name and logo(s) as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material in accordance with the Customer's instructions (if any) from time to time. The Customer licenses KP to use its name and logo(s) for such purpose.

12. GSCOP COMPLIANCE

12.1 To the extent that the Groceries Supply Code of Practice (as amended from time to time) ("**GSCoP**") applies to the Customer, these Conditions and each Contract incorporate the provisions of GSCoP and the provisions of GSCoP may be enforced by KP as terms of these Conditions.

12.2 In the event of any inconsistency between: (i) the provisions of GSCoP and (ii) these Conditions or other provisions of a Contract, the provisions of GSCoP shall take precedence.

13. GENERAL

13.1 The Customer shall at all times comply with all applicable laws, including but not limited to the Modern Slavery Act 2015, the Bribery Act 2010 and the Criminal Finances Act 2017, and including any law as amended, extended, superseded or consolidated from time to time

13.2 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

13.3 The Customer agrees that KP and any of its group undertakings (as defined in section 1161 of the Companies Act 2006) may search the files of a Credit Reference Agency which shall keep a record of that search. Details of the conduct of that Customer's account may also be disclosed to the agency. This information may be used by other parties for the purpose of a continuing assessment of credit risk.

13.4 A notice shall be effective upon written notice to the other party which shall be sent by first class mail or courier. Any notice given shall be deemed to have been received as of the earlier of actual receipt or three (3) Business Days after posting or depositing with a courier service. The address to which a notice is to be sent is the party's current registered office address. 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.

13.5 A notice given under or in connection with this Agreement is not valid if sent by email.

13.6 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of KP.

13.7 No waiver by KP of any breach by the Customer of the Contract or these Conditions shall be considered as a waiver of any subsequent breach. No failure or delay by KP in exercising any right or remedy under the Conditions, a Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.8 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.9 No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

13.10 The Contract (incorporating these Conditions and, where applicable, GSCoP) 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 in relation to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of KP which is not set out in the Contract.

13.11 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (whether contractual or non-contractual in nature, such as claims in tort, from breach of statute or regulation or otherwise) shall in all respects be governed by and interpreted in accordance with English Law and each party irrevocably submits to the exclusive jurisdiction of the English courts.