

TERMS AND CONDITIONS OF SALE OF PREMIER CHOCOLATE LTD

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions of sale the following words and expressions shall have the following meanings:

- Affiliate:** means any entity that directly or indirectly Controls is controlled by, or is under common Control with another entity;
- Business Day:** means a day other than a Saturday, Sunday or bank or public holiday in England when banks in London are open for business;
- Buyer:** means the person or firm who has entered into the Contract with and purchases the Goods from the Seller;
- Conditions:** means the terms and conditions of sale set out in this document, subject to any variation agreed in accordance with condition 2.3 or as updated by the Seller from time to time;
- Contract:** means, in relation to each contract for the sale of Goods by the Seller to the Buyer:
- (a) these Conditions;
 - (b) the Order; and
 - (c) any other document, signed by a duly authorised representative of each of the Seller and the Buyer, expressly relating to the Goods.
- Contract Price:** means the total price for the Goods (including VAT and delivery charges (if applicable) as set out in the Order Confirmation;
- Control:** has the meaning given in the Corporation Tax Act 2010, s1124 and Controls and Controlled will be interpreted accordingly;
- Delivery:** means the time at which the Goods are deemed to be delivered to the Buyer under Condition 4.3;
- Delivery Location:** means the location specified in an Order to which the Seller shall deliver, or procure the delivery of the Goods;
- Force Majeure Event:** means any act or event beyond the Seller's reasonable control, including but not limited to strikes, lock-outs or other industrial disputes (whether including the workforce of the Seller or any other party) failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage to plant machinery or equipment, breakdown to plant machinery or equipment, import or export regulations or embargoes, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, difficulties in obtaining raw materials, labour, fuel, parts or machinery or increases in the costs of the same, foreign exchange fluctuations and currency regulation, any change in delivery dates, quantities or specifications for Goods requested by the Buyer, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
- Goods:** means the goods or services (or any part of them) specified in the Order;
- Intellectual Property Rights:** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill,

rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: **(a) whether** registered or not; **(b) including** any applications to protect or register such rights; **(c) including** all renewals and extensions of such rights or applications; **(d) whether** vested, contingent or future; **(e)** to which the relevant party is or may be entitled, and **(f)** in whichever part of the world existing;

Know How:	means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);
Order Confirmation:	means the Seller's written acceptance of the Order;
Order:	means the Buyer's order for the supply of Goods submitted by the Buyer pursuant to clause 3;
Seller:	means Premier Chocolate Limited (company number 8881721) whose registered office address is 54 South Molton Street, Guru House, London, W1K 5SG;
Special Orders:	means an Order for Goods not featured in the Seller's standard price list including Goods produced to the Buyer's specification or where the standard goods of the Seller are altered in accordance with the Buyer's requirements;
Trade Mark (s):	means [Premier Chocolate and Chocolatiers Collection; and any other marks owned by the company
VAT:	means value added tax as defined in the Value Added Tax ACT 1994 and any similar tax.

1.2 In these Conditions the following rules apply:

- (a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted, A reference to a statute or statutory provision includes any subordinate legislation made under the statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms "including", "include", "in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (c) a reference to "writing" or "written" includes emails.

2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.

2.2 These Conditions override and exclude any other terms and conditions stipulated or referred to by the Buyer or which the Buyer otherwise seeks to apply, except to the extent that the Seller otherwise agrees in writing.

2.3 Subject to clause 2.4 these Conditions cannot be varied except in writing signed by both parties.

2.4 The Supplier may modify these Conditions or the standard price list by publishing any changes by e-mail. The Buyer should check before submitting an Order since by placing an Order the Buyer agrees to be bound by any updates to such Conditions or standard price list.

3. ORDERS

3.1 The Buyer may at any time provide the Seller with an Order for Goods and may from time to time issue purchase orders (collectively referred to as "Order") for Goods to the Seller. All Orders shall be subject to the terms of these Conditions unless otherwise agreed in writing between the parties.

3.2 All Orders:

3.2.1 may be given in writing (including electronic mail) or may be given orally (but if given orally must be confirmed in writing, including electronic mail, within one Business Day);

3.3.2 shall state:

- (a) the quantity of Goods ordered;
- (b) the total price payable for the Goods ordered;
- (c) any special packaging requirements;
- (d) the required date for Delivery;
- (e) the Delivery Location;
- (f) the contact reference; and
- (g) the purchase Order number

3.3 An Order shall constitute an offer by the Buyer to purchase the specified Goods on the terms of these Conditions.

3.4 The Seller may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise until the earlier of:

- (a) the issue by the Seller of the Order Confirmation; or
- (b) the Seller dispatching the Goods or notifying the Buyer that they are available for collection (as the case may be).

3.5 Rejection by the Seller of an Order, including any communication that may accompany such rejection shall not constitute a counter-offer of acceptance by the Buyer.

3.6 Any terms and conditions of the Buyer included or referred to in the Order, or any proposed variation to these Conditions set out in the Order, shall not be binding on the Seller.

3.7 The Seller may issue quotations to the Buyer from time to time. Quotations are invitations to treat only, and are valid for 7 days only, unless otherwise mentioned on the Quote. They are not an offer to supply Goods and are incapable of being accepted by the Buyer.

3.8 Any samples, drawings, photographs, descriptive matter or advertising issued by the Seller and illustrations or descriptions of previously supplied Goods contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and do not form part of these Conditions. The Buyer agrees that, in submitting an Order, it has not relied on any representations or statements by the Seller other than those expressly set out in these Conditions.

4. DELIVERY OF GOODS

4.1 Each Order shall specify whether the Goods are to be:

4.1.1 delivered by the Seller by a carrier or pallet network appointed by the Seller, to the Delivery Location on the date(s) specified in the Order; or

4.1.2 made available for collection by the Buyer at the Seller's, or carrier's premises set out in the Order (as the case may be). The Buyer shall collect the Goods within the period specified in the Order.

4.2 The Seller shall ensure that each delivery of Goods is accompanied by a delivery note which shows if applicable the purchase order number all relevant Buyer and Seller reference numbers, the type and quantity (including the code number of the Goods, where applicable), special storage instructions (if any)

4.3 The Goods shall be deemed delivered:

4.3.1 if delivered by the Seller under clause 4.1.1, on arrival of the Goods at the Delivery Location; or

4.3.2 if delivered by a carrier or pallet network under clause 4.1.1, on delivery of the Goods by the Seller to the carrier or pallet network; or

if collected by the Buyer under clause 4.1.2, when the Seller makes the Goods available for collection at the Seller's or carrier's premises (as the case may be).

4.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.5 If Goods are contracted to be delivered by instalments, late delivery or non-delivery of one instalment shall not entitle the Customer to reject any other instalment under the Contract.

4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.7 The Seller will endeavour to deliver the correct quantity of Goods ordered by the Buyer, but if the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than that ordered by the Buyer, the Buyer shall not be

- entitled to reject the Goods or any of them by reason of the surplus or shortfall, and charges for such Goods shall be made on the basis of the quantities supplied.
- 4.8 The Buyer will provide at its own expense at the Delivery Location, adequate and appropriate labour for unloading the Goods.
- 4.9 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in or failure caused by:
- (a) the Buyer's failure to: (i) make the Delivery Location available, (ii) prepare the Delivery Location as required for delivery or (iii) provide the Seller with adequate instructions for delivery;
 - (b) the Buyer's failure to collect the Goods from the Seller's premises or carrier's premises, or;
 - (c) a Force Majeure Event or the Buyer's failure to provide the Seller with instructions that are relevant to the supply of Goods.
- 4.10 Any delay in delivering the Goods shall not entitle the Buyer to terminate or rescind the Contract
- 4.11 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract Price against any invoice raised for such Goods.
- 4.12 If the Buyer fails to accept delivery of the Goods within 5 Business Days of the Seller notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Agreement in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed by 9.00am on the 5th Business Day following the day on which the Seller notified the Buyer that the Goods were ready; and
 - (b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance and storage).
- 4.13 If 30 Business Days after the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller 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.

5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Buyer on completion of Delivery.
- 5.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods in which case title to the Goods shall pass at the time of payment.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods as bailee for the Seller;
 - (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of Delivery;
 - (e) notify the Seller immediately if it becomes subject to any of the events listed in Condition 12.1(c) to Condition 12.1(j); and
 - (f) give the Seller such information relating to the Goods as the Seller may require from time to time.
- 5.4 If at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in Condition 12.1(c) to Condition 12.1(j) the Seller may:
- (a) require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and
 - (b) if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

6. ACCEPTANCE OF GOODS AND RETURNS

- 6.1 The Buyer shall be deemed to have accepted the Goods from the point of Delivery or deemed Delivery as provided in Condition 4.3 unless, in the case of a defect in the quality or state of the Goods or the Goods otherwise not complying with the Contract, which defect or non-compliance was apparent upon inspection or testing of the Goods (or would have been had a careful inspection or reasonable test been carried out), the Buyer gives the Seller a notice specifying such defect or non-compliance within 14 days after receiving the Goods and in any event prior to their use or re-sale and after doing so, gives the Seller a reasonable opportunity to inspect or test the Goods before they are used or resold.

- 6.2 Unless the Goods are found to be defective under Condition 6.1 no Goods may be returned to the Seller without its prior agreement. Special Orders cannot be subject to returns.

7. WARRANTIES AND LIABILITIES

- 7.1 Subject to the provisions of these Conditions, Goods supplied by the Seller will:
- (a) comply with any description, specification and standard supplied in the Contract;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979
 - (d) be supplied with reasonable care and skill within the meaning of the Sale of Goods Act 1979;
- 7.2 Subject to Condition 7.3 if,
- (a) the Buyer gives notice in writing as permitted by Condition 6.1 that some or all of the Goods do not comply with the warranty set out in 7.1;
 - (b) the Buyer is given a reasonable opportunity of examining such Goods; and
 - (c) the Seller (if asked to do so by the Seller) returns the Goods to the Seller's place of business at the Seller's cost.
 - (d) the Buyer shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3 The Seller shall not be liable for the Goods' failure to comply with the warranty in Condition 7.1 if:
- (a) the Buyer makes any further use of such Goods after giving a notice in accordance with Condition 6.1;
 - (b) where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - (c) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (d) the defect arises as a result of the Seller following any drawing, design, specification, or utilizing any raw material or packaging supplied by the Buyer or a third party as instructed by the Buyer;
 - (e) the defect arises as a result of damage caused to the Goods from the point of Delivery or deemed delivered as provided in clause 4.3 and/or damage caused to the Goods in accordance with clause 7.2(c);
 - (f) the Buyer alters or repairs such Goods without the written consent of the Seller or, having received such consent not in accordance with the Seller's instructions;
 - (g) the Goods have been opened but otherwise free of defect;
 - (h) they are returned to the Seller in poor condition or with the original packaging marked or damaged and this was not immediately notified to the Seller in accordance with clause 6.1;
 - (i) the Goods were made or brought into stock for the Buyer (Special Order) and were delivered fault free;
 - (j) the Goods differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - (k) the defect arises as a result of the Seller following any change to the specification requested in writing by the Buyer; and
 - (l) the defect arises as a result of the Seller using any equipment, packaging, components, machinery or raw materials provided by the Buyer for the purposes of complying with the Order.
- 7.4 The provisions of these Conditions, including the warranties set out in clause 7.1 shall apply to any Goods that are repaired or replaced with effect from Delivery of the repaired or replaced Goods.
- 7.5 In the event any Goods are made or supplied to the Buyer's own specification or where standard goods of the Seller are altered in accordance with the Buyer's instructions:
- (a) the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, but that such specification does not infringe any third party Intellectual Property Rights and the Buyer shall indemnify the Seller and its Affiliates 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 reasonable professional costs and expenses) suffered or incurred by the Seller and its Affiliates in connection with any claim made against the Seller and its Affiliates for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection

with the Seller's use of the specification, manufacture of the Goods and supply of the Goods. This Condition 7.4(a) shall survive termination of the Contract.

- (b) the Seller reserves the right without any liability to change the Buyer's specification which is necessary to ensure the Goods comply with any health, safety or other statutory provision.

Except as provided in this Condition 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Condition 7.1.

- 7.6 The terms of Condition 7.1 shall apply to any repaired or replacement Goods supplied by the Seller under Condition 7.2.
- 7.7 Subject to Condition 7.9, the total liability of the Seller shall be limited to the cost of making good the Goods, the repayment or giving or credit for the invoice price of the Goods or the replacement of the Goods in accordance with Condition 7.1
- 7.8 Subject to Condition 7.9, the Seller shall not be liable for consequential or special losses nor shall the Seller be liable for (whether direct or indirect) loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, loss of revenue, discount or rebate (whether actual or anticipated); and harm to reputation or loss of goodwill.
- 7.9 The liability of the parties shall not be limited in any way in respect of the death or personal injury caused by negligence; fraud or fraudulent misrepresentation and any other losses which cannot be excluded or limited by applicable law.
- 7.10 Except as set out in this clause 7 the Seller gives no warranty and makes no representations in relation to the Goods; shall have no liability for their failure to comply with the warranty in clause 7.1 and all warranties and conditions (including the terms implied by Sections 13 to 15 of the Sale of Goods Act 1979) whether express or implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

8. MATERIALS AND PROPERTY PROVIDED BY THE CUSTOMER

- 8.1 The Seller shall be entitled to make a reasonable charge for the storage of the Buyer's property left with the Seller before receipt of the Order or after notification to the Buyer of completion of the Order.
- 8.2 The Buyer's property and all property supplied to the Seller by or on behalf of the Buyer shall, while it is in the possession of the Seller or in transit to or from the Buyer, be deemed to be at the Buyer's risk unless otherwise agreed.
- 8.3 The Seller may reject any materials or property supplied or specified by the Buyer, which appear to the Seller to be unsuitable. Where materials are so supplied or specified, the Seller will take every care to secure best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.
- 8.4 A charge may be made to cover any additional work involved where any specification and/or copy supplied is not clear and legible.
- 8.5 The Buyer accepts a minimum tolerance in wastage of 5% for raw materials and 3% of packaging.
- 8.6 If any item provided by the Buyer does not arrive within the agreed time frame, the Seller reserves the right to amend the delivery date.
- 8.7 Any electrical appliances or machinery provided by the Buyer to the Customer in relation to the Goods must comply with all applicable laws to include the Provision and Use of Work Equipment Regulations 1998, The Electricity at Work Regulations 1989, and have up-to-date Portable Appliance Testing (PAT).
- 8.8 The Buyer shall maintain at all times (at its own cost) adequate insurance in relation to any electrical appliances or machinery to be used by the Seller in connection with the Goods and/or stored at the Seller's premises.

9. PRICE AND TERMS OF PAYMENT

- 9.1 The Buyer shall pay to the Seller the Contract Price set out in in the Order Confirmation.
- 9.2 The Seller reserves the right, at any time before delivery, to increase the Contract Price to reflect any increase in the direct cost to the Seller of supplying the relevant Goods including, but not limited to foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs, and/or due to a Force Majeure Event between the date of quotation and the date of acceptance of the Order then the Seller may increase the quoted price accordingly by giving written notice to the Buyer of such increase.
- 9.3 In respect of Goods, the Seller shall invoice the Buyer on or at any time after completion of Delivery.

- 9.4 The Buyer shall pay each invoice submitted by the Seller:
- (a) within the payment terms set out in the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Seller.
- 9.5 All amounts payable by the Buyer are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply of VAT purposes is made under the Agreement by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the Supply of Goods.
- 9.6 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4 % per annum above HSBC's base 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.
- 9.7 The Buyer shall pay all amounts due in full without any set-off, counterclaim, deduction or withholding except as required by law. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

10. CREDIT LIMIT

The Seller may set and vary credit limits from time to time and withhold all further supplies of Goods if the Buyer exceeds such credit limit.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Subject to clause 10.2 the Buyer acknowledges that proprietary rights in the Goods, including but not limited to all Intellectual Property Rights in the Goods and all Know How in relation to the manufacture of the Goods will at all times and for all purposes vest and remain vested in the Seller, except that any Intellectual Property that has been licenced to the Seller by a third party will remain vested in that third party. The Buyer shall not represent, warrant or undertake that it has any rights in or title to the Intellectual Property Rights, and in particular the Trade Marks in the Goods. The Buyer represents warrants and undertakes that it shall not, whether by act or omission, allow the rights of the Seller to be impaired with regard to the Intellectual Property Rights and the Trade Marks in the Goods.
- 11.2 The Buyer hereby grants a royalty free, perpetual, irrevocable, non exclusive, non transferable licence to the Seller to use its specification, to include but not limited to its trade marks, logos or trade names, packaging, non chocolate ingredients and chocolate moulds including but not limited to all Intellectual Property Rights relating thereto to the extent necessary to enable the Seller to comply with its obligations under these Conditions. All Intellectual Property Rights in such trademarks, logos or trade names, packaging, non chocolate ingredients and chocolate moulds will remain the Buyer's exclusive property, except that any Intellectual Property that has been licenced to the Buyer by a third party will remain vested in that third party
- 11.3 The Intellectual Property Rights in all drawings, designs, ideas, concepts, Know How or techniques produced by or on behalf of the Seller in connection with the Contract shall remain the exclusive property of the Seller. The Buyer shall not reproduce any drawings or designs produced by or on behalf of the Supplier in connection with the Contract, whether in whole or in part.
- 11.4 The Buyer shall indemnify the Seller and its Affiliates against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller arising out of or in connection with any breach of clause 10.3.
- 11.5 The Buyer shall indemnify the Seller and its Affiliates 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 reasonable professional costs and expenses) suffered or incurred by the Seller and its Affiliates in connection with any claim made against the Seller and its Affiliates for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the specification, manufacture of the Goods and supply of the Goods.

The Buyer shall not modify Goods or packaging or alter, add to, deface, remove, conceal or obliterate any Trade Mark, notice or other information on the Goods or their packaging.

12. CONFIDENTIALITY

- 12.1 The Buyer shall keep confidential all Confidential Information of the Seller and will only use the Seller's Confidential Information as required to perform the Contract. The provisions of this Condition will not apply to:
- (a) any information which was in the public domain at the date of the Contract;

- (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - (c) any information which is independently developed by the other party without using information supplied by the first party; or
 - (d) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This Condition will survive termination of the Contract.
- 12.3 The Buyer shall not make any public announcement or disclose any information regarding the Contract except to the extent require by law or regulatory authority.

13. THE SELLERS TERMINATION RIGHTS

- 13.1 Without prejudice to its other rights and remedies, the Seller shall be entitled to terminate wholly or in part any or every contract between itself and the Buyer or to suspend further deliveries under any contract on the occurrence of any of the following events:
- (a) if any debt is due and payable by the Buyer to the Seller but is unpaid, or if the Buyer has failed to provide any letter of credit or other security required by the Seller;
 - (b) the Buyer commits a material breach, or series of breaches resulting in a material breach of the Contract and such breach is not remediable or if capable of remedy is not remedied within 14 days of written notice to do so;
 - (c) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - (d) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where a company for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more than other companies or the solvent reconstruction of the Buyer;
 - (f) the Buyer (being an individual) is the subject of a bankruptcy petition or order;
 - (g) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharges within 14 days;
 - (h) an application is made to the court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);
 - (i) the holder of a qualifying charge over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (j) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
 - (k) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 12.2 (b) to Condition 12.2(j) (inclusive);
 - (l) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substnatially the whole of its business;
 - (m) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer;s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - (n) the Buyer (being a company) undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control which in the Seller's reasonable opinion could lead to the Buyer being unable to fulfil its obligations under the Contract or any other contract.
- 13.2 Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract if the Buyer fails to pay any amount due under the Contract on the due date for

payment, the Buyer becomes subject to any of the events listed in Condition 12.2(b) and Condition 12.2(j), or the Seller reasonably believes that the Buyer is about to become subject to any of them.

13.3 On termination of the Contract for whatever reason, the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest, and in respect of Goods supplied but for which no invoice has yet been submitted the Seller shall submit an invoice which shall be payable by the Buyer immediately on receipt..

13.4 Any provision of these Conditions that is expressly or by implication intended to survive termination, shall survive termination of the Contract.

14. FORCE MAJEURE

14.1 The Seller will not be liable or responsible for any failure to perform, or delay in performance if, any of the Sellers obligations under these Conditions is caused by a Force Majeure Event.

14.2 If a Force Majeure Event takes place that affects the performance of the Seller's obligations under these Conditions:

(a) the Seller will contact the Buyer as soon as reasonably possible to notify it; and

(b) the Seller's obligations under these Conditions will be suspended and the time for performance of the Seller's obligations will be extended for the duration of the Force Majeure Event. Where the Force Majeure Event affects the Seller's performance, the Seller will recommence the services as soon as reasonably possible after the Force Majeure Event is over.

14.3 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Customer) if it is prevented or delayed in the carrying on of its business due to one or more Force Majeure Events.

14.4 If the Force Majeure Event persists for a continuous period of 30 days the Seller shall be entitled to terminate the Contract by giving written notice to the Buyer.

15. RESELLING RESTRICTIONS

15.1 The Goods must be sold or re-sold only in the package and containers in which the Goods were supplied by the Seller.

15.2 No trade mark(s) other than the Trade Mark(s) and/or the Buyer's trademarks, logos or trade names carried by the Goods at the time of delivery will be marked or applied in relation to the Goods.

15.3 Where applicable, the Buyer shall take all such steps that are necessary to ensure that the Goods are stored, displayed and offered for sale in accordance with any instructions provided by the Seller from time to time.

15.4 In the event the Buyer intends to re-sell the Goods for any business or trade purpose after purchase from the Buyer (a "Non End User") the Buyer shall procure that any Non End User shall comply with the provisions of this clause 14.

15.5 The Buyer will co-operate with the Seller in the event it is necessary to re-call any Goods supplied.

16. DATA PROTECTION

16.1 The Seller shall have the right to hold information supplied by the Buyer and to use it to process the Order and payment of the Goods and to inform the Buyer of new Goods and prices.

16.2 The Seller shall have the right to conduct credit and other checks and use credit scoring techniques and to pass the Buyer's details to credit reference agencies.

16.3 The Seller shall have the right to share information about the Buyer with its Affiliates and they shall have the right to send the Buyer information about their other Goods, which they believe, may be of interest.

17. ASSIGNMENT AND OTHER DEALINGS

17.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

17.2 The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

18. NO PARTNERSHIP OR AGENCY

Nothing in these Conditions is intended to or shall be deemed to establish any partnership or joint venture of any kind between 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.

19. SEVERANCE

If any provision of these Conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal the other provisions shall remain in force.

20. ENTIRE AGREEMENT

The Contract constitutes the entire agreement and understanding between the parties with respect of the matters contained herein and supersedes any and all previous agreements, written or oral, express or implied between the parties with respect to it.

21. THIRD PARTIES

No third party has any right to enforce the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

Notices given under the Contract must be in writing and sent, or delivered by hand, to the parties at their usual address. Notices will be deemed delivered on the second day after sending, if sent by post, or immediately, if delivered by hand.

23. WAIVER

No delay, act or omission by either party in exercising any right will be deemed to be a waiver of that, or any other right.

24. GOVERNING LAW AND JURISDICTION

The Contract is governed by English law. The parties both agree to submit to the exclusive jurisdiction of the English courts.