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## ***Terms and Conditions***

### **1. INTERPRETATION**

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

**Company:** Bramble Foods Limited, Company Number 06426069, whose registered office is currently at 5 Grove Court, Enderby, LE19 1SA. Trading address is Bramble House, Riverside End, Riverside Ind. Estate, Market Harborough, Leicestershire, LE16 7PU

**Contract:** any contract between the Company and the Customer for the sale of Goods, incorporating these Conditions;

**Customer:** the person, firm or company who purchases the Goods from the Company;

**Credit Account:** the credit account offered by the Company to the Customer which qualifies the Customer for the Company's standard terms of credit of 30 days from date of invoice;

**Goods:** any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

**Minimum Carriage Paid Order Value:** means the minimum monetary order value which qualifies the customer for free delivery as set out in the Product List;

**Product List:** means the Company's sales brochure/price list issued from time to time;

**Working Day:** means any day of the week except Saturday, Sunday or a UK Bank, public or statutory holiday.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

### **2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order placed by the Customer shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until the Company confirms it has accepted the order (either orally or in writing) or, if earlier, the Company commences manufacture of the Goods, orders the Goods or raw materials needed for the Goods from a supplier, appropriates Goods to the Customer's order or despatches the Goods to the Customer (whichever occurs first). Any order shall be accepted entirely at the Company's discretion.

2.6 Orders can be placed directly with the Customer's sales contact. Orders will only be confirmed in writing on request.

2.7 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate and shall provide details of the Customers' account number (if applicable) relevant product code(s), product description(s), sizes and quantities of items required.

2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company confirms it has accepted the order (either orally or in writing) or, if earlier, the Company commences manufacture of the Goods, orders the Goods or

raw materials needed for the Goods from a supplier, appropriates Goods to the Customer's order or despatches the Goods to the Customer (whichever occurs first). Any quotation is subject to final confirmation and is valid for a

period of 30 days only  
from its date, provided that the Company has not previously withdrawn it.

2.9 The Company will provide a specification for the Goods (or will pass on to the Customer any specification provided by the manufacturer of the Goods). Specifications will be provided in the Company's standard format (or the manufacturer's if applicable). If the Customer requires the Company to complete a specification in accordance with the Customer's requirements and/or format, or asks the Company to complete the Customer's own or additional forms or provide additional information, the Company reserves the right to make a charge to reflect any time and administration costs incurred by the Company at such rates as are notified by the Company to the Customer following the Customer's request for such information.

### **3. CANCELLATION**

3.1 The Customer can only cancel an order (or part of an order) which has already been accepted in accordance with condition 2.5 above, if it has obtained the Company's prior agreement in writing. The Company is not bound to agree to any such cancellation and may complete such order even if the Customer purports to cancel it, in which case the price for the Goods will be due and payable in accordance with these Conditions.

### **4. DESCRIPTION**

4.1 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample. Any sample supplied by the Company is supplied only to give the Customer a general indication of the quality, colour and/or type.

4.2 The Company reserves the right, in its discretion, without liability to the Customer to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which do not materially affect the quality of the Goods.

4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by the Company is subject to correction without any liability on the part of the Company.

### **5. DELIVERY**

5.1 If the total value of the Goods ordered from the Company in any one order (exclusive of VAT) is above the Minimum Carriage Paid Order Value delivery of the Goods shall take place at the Customer's premises or the destination agreed between the Customer and the Company, unless otherwise agreed in writing.

5.2 If the total value of the Goods ordered from the Company (exclusive of VAT) is below the Minimum Carriage Paid Order Value, at the sole discretion of the Company, delivery of the Goods shall take place exworks at the Company's premises, unless the Company agrees, at the Customer's request and expense, to deliver the Goods to the Customer or to a place specified by the Customer or agrees to arrange for carriage of the Goods to such place on the Customer's behalf, unless otherwise agreed in writing.

5.3 Where the Goods are to be collected from the Company's premises, the Company will notify the Customer when the Goods are ready for collection and the Customer will arrange a time to collect the Goods with the Company in accordance with the Company's booking in system which must be within 7 days of the Company notifying the Customer that the Goods are ready for collection.

5.4 Any dates specified by the Company for delivery of the Goods or availability for collection of the Goods are intended to be an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery shall be within a reasonable time.

5.5 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the contract unless such delay exceeds 180 days.

5.6 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, fails to collect the Goods in accordance with condition 5.3 or if the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

5.6.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

5.6.2 the Goods shall be deemed to have been delivered; and

5.6.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.7 If the Company agrees in writing, at the Customer's request, to deliver the Goods to premises or a place which is unattended, risk in the Goods shall pass to the Customer on delivery to the place specified by the Customer.

5.8 Where delivery is to take place at the Customer's premises or a place specified by the Customer the Customer shall provide at the place of delivery and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

5.9 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered by the Customer and accepted by the Company, the Customer shall not be entitled to object to or reject

the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

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

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

5.12 All pallets are returnable. A charge of £15 per pallet will be payable if the pallets are not returned to the Company undamaged and in a good and reusable condition within 28 days of delivery. Alternatively, sound exchange pallets may be returned to the seller at the time of delivery.

## **6. NON-DELIVERY**

6.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

6.2 At the time of delivery or collection, the Customer must count the Goods, check for damage and notify any shortages or damage on the delivery note. The Customer must then sign and date the delivery note and complete any other required details on the delivery note.

6.3 Any liability of the Company for non-delivery of the Goods, shortages or damaged Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6.4 The Customer must comply with the following:

6.4.1 any shortages, discrepancies or damage which would have been obvious on delivery must be notified on the delivery note and confirmed in writing to the Company within 72 hours;

6.4.2 any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 7 days of the date of delivery or collection) must be notified to the Company in writing within 7 days of the date of delivery or collection of the Goods;

6.4.3 any defect or other failure of the Goods to conform with the contract which would not be apparent within 7 days of the date of delivery or collection must be notified to the Company within 7 days of the day the Customer discovers, or ought to have discovered, the defect.

6.5 If the Customer fails to comply with condition 6.4 above the Customer shall be deemed to have accepted the Goods as being in accordance with the Contract and shall not be entitled to reject the Goods, the Company shall have no liability for any such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

## **7. RISK/TITLE**

7.1 Subject to conditions 5.6 and 5.7 the Goods are at the risk of the Customer from the time of collection or delivery or deemed delivery.

7.2 Full legal, beneficial and equitable title to the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to the Company from the Customer on any account.

7.3 Until full legal, beneficial and equitable title to the Goods has passed to the Customer, the Customer shall:

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

7.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

7.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

7.5 The Customer's right to possession of the Goods shall terminate immediately if:

7.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

7.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other

contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

7.5.3 the Customer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them and the Company may, on demand and without prior notice, require the Customer to deliver the Goods up the Company where the Customer's right to possession has terminated.

7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

7.9 For the avoidance of doubt, if the Goods are mixed, blended or combined with other products to which title is not held by the Company, but the Goods remain identifiable and can be separated from the other products, the Customer shall effect the separation of the Goods at its own expense and restore the Goods to the Company when asked to do so by the Company.

7.10 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 7 shall remain in effect.

## **8. PRICE**

8.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the Company's computer price ruling at the date of delivery or deemed delivery or collection of the Goods less any agreed discounts subject to condition 8.7.

8.2 For the avoidance of doubt, any price quoted at the date of order and the prices set out in any Product List are indicative only, and the Company reserves the right to increase the price at any time prior to delivery for any reason including but not limited to increased raw material costs, fluctuations in exchange rates, higher rates of taxes, duty, freight or insurance and increased prices charged to the Company by branded product suppliers.

8.3 The computer price (and any indicative prices set out in the Product List) are exclusive of any value added tax.

8.4 If the value of the Customer's order is above the Minimum Carriage Paid Order Value the computer price (and any indicative prices set out in the Product List) will include all costs or charges in relation to packaging, loading, unloading and carriage.

8.5 If the value of the Customer's order is below the Minimum Carriage Paid Order Value, and the Company agrees to deliver the Goods to the Customer, the Customer must pay all costs in relation to packaging, loading, unloading, carriage and insurance in addition to the price of the Goods when it is due to pay for the Goods in accordance with condition 9.

8.6 Any discount agreed between the Company and the Customer will be subject to any agreed pre-conditions such as those based on a minimum turnover and will not be available if those pre-conditions are not met.

8.7 The Company reserves the right, in its absolute discretion, to alter, withdraw or vary discounts at any time.

## **9. PAYMENT**

9.1 Subject to condition 9.5, and unless otherwise agreed in writing, if the Customer has a Credit Account, payment of the price for the Goods (and any applicable delivery charges) or other payments due in accordance with these Conditions shall be due in pounds sterling 30 days after the date of invoice.

9.2 Subject to condition 9.5 if the Customer does not have a Credit Account, payment of the price for the Goods (and any applicable delivery charges) will be due in advance of delivery unless otherwise agreed in writing. If the Customer fails to pay for the Goods in accordance with this condition, the Company may, in its absolute discretion, re-sell the Goods ordered by the Customer and cancel the Contract.

9.3 Time for payment shall be of the essence.

9.4 No payment shall be deemed to have been received until the Company has received cleared funds.

9.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

9.7 If the Customer fails to pay the Company any sum due pursuant to the Contract on the due date for payment, the Company shall be entitled to:

9.7.1 make a late payment charge of 2% of the value of the Goods ordered (provided that any such charge shall not exceed £70.00) and charge the Customer statutory interest on such sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (the "Act"). For the avoidance of doubt, in the event of late payment the Company's rights under the Act shall be varied to the extent that the Company shall be entitled, at its option, to charge 2% of the value of the Goods ordered (up to a maximum of £70.00) rather than the fixed sums of compensation set out in the Act. Nothing in these Conditions is intended to exclude the Company's right to charge statutory interest under the Act;

9.7.2 cancel the Contract or suspend any further performance of the Contract including suspending deliveries of the Goods and suspending delivery of any other Goods to the Customer until arrangements as to payment or credit have been established which are satisfactory to the Company;

9.7.3 cancel any discount offered to the Customer.

9.8 If a Customer's payment by direct debit fails or a cheque is not honoured, the Company shall be entitled to charge the Customer a fee of £20 plus VAT to cover administration costs for each failed presentation.

9.9 Payment can be made either by cash, sending a cheque (made payable to Bramble Foods Limited) Bramble Foods Limited, Bramble House, Riverside End, Riverside Ind. Estate, Market Harborough, Leicestershire, LE16 7PU, by credit card (in which case the Company will levy a 2% administration charge on each transaction), by debit card (in which case the Company will levy a 50p administration charge on each transaction) or by direct BACS or CHAPS transfer. The Customer should note that cheques can be passed to the Company's drivers and sales representatives but such drivers and sales representatives cannot accept cash.

## **10. QUALITY**

10.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

10.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Goods shall:

10.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

10.2.2 be reasonably fit for purpose; and

10.2.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.

10.3 The Company shall not be liable for a breach of any of the warranties in condition 10.2 unless:

10.3.1 the Customer notifies any defects in accordance with the time periods set out in condition 6.4; and

10.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

10.4 The Company shall not be liable for a breach of any of the warranties in condition 10.2 if:

10.4.1 the Customer makes any further use of the Goods after giving notice in accordance with condition 10.3; or  
10.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or

10.4.3 there are external signs of infestation on the Goods; or

10.4.4 the Goods have been subject to adverse storage temperature, exposure to excess light or taint; or

10.4.5 the Goods are bulk products which have been processed, blended, mixed, altered, packaged, unpackaged or tampered with in any way. This is because the Customer is required to carry out and complete its own quality control checks, inspections and sampling prior to using any bulk products in production or carrying out any reprocessing or packaging. The Customer should notify the Company of any defects discovered from such checks and inspections prior to carrying out any processing or packaging and before re-sale of the Goods; or  
10.4.6 the "best before" or "sell by" date of the Goods has expired.

10.5 Subject to condition 10.3 and condition 10.4, if any of the Goods do not conform with any of the warranties in condition 10.2 the Company shall, at its option, repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

10.6 If the Company complies with condition 10.5 it shall have no further liability for a breach of any of the warranties in condition 10.2 in respect of such Goods.

## **11. LIMITATION OF LIABILITY**

11.1 Subject to condition 5, condition 6 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

11.1.1 any breach of these Conditions;

11.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

11.3.1 for death or personal injury caused by the Company's negligence; or

11.3.2 under section 2(3), Consumer Protection Act 1987; or

11.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

11.3.4 for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 200% of the Contract price; and

11.4.2 the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims

for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11.5 The price of the Goods has been calculated on the basis that the Company will exclude or limit its liability as set out in these Conditions and the Customer by placing an order agrees and warrants that the Customer shall insure or bear itself any loss for which the Company has excluded or limited its liability in the Contract and the Company shall have no further liability to the Customer.

## **12. RECALL**

12.1 The Customer shall keep the Company properly informed of all customer complaints concerning the Goods and shall comply with any directions of the Company in any issues, proceedings or regulations relating to such complaint.

12.2 If the Company notifies the Customer in writing of any defect in the Goods previously delivered to the Company which exposes or may expose consumers to any risk of death or injury, the Customer shall co-operate fully with any steps taken by the Company. The Company may, at its discretion, recall any Goods already sold by the Customer to its customers (whether for a refund or credit or replacement of the Goods) which shall in each case be undertaken by the Company.

## **13. DESIGNS PROVIDED BY THE CUSTOMER**

13.1 If the Customer requires the Company to make the Goods in accordance with the Customer's designs, drawings, specifications or other data or information, the Company acknowledges that all intellectual property rights in such drawings, specifications or other data or information are in the sole ownership of the Customer, unless otherwise agreed in writing.

13.2 The Customer shall be solely responsible for the accuracy of the Customer's designs, drawings, specifications and other data supplied to the Company by the Customer and in conformity with which the Company is to manufacture or package the Goods even if the Company examines, inspects, studies or comments to the Customer upon any such designs, drawings, specifications or other data.

## **14. INDEMNITY**

14.1 The Customer irrevocably and unconditionally agrees to indemnify the Company in full and on demand and keep it so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses whether direct or indirect made against or incurred or suffered by the Company whether wholly or in part resulting from the following matters:-

14.1.1 the manufacture and sale of the Goods by the Company in accordance with the Customer's designs, drawings, specifications or other data or information provided by the Customer;

14.1.2 any claims that the intellectual property rights of any third party have been infringed through the manufacture, sale or use of the Goods (save to the extent the same have been supplied in accordance with specifications or designs of the Company);

14.1.3 any claims which relate to or arise as a consequence of the Company delivering Goods to unattended premises in accordance with condition 5.7;

14.1.4 any failure of any labelling of any "own label" packaging or other packaging produced in accordance with the Customer's specific requirements to comply with all applicable statutory or EC requirements.

## **15. ASSIGNMENT**

15.1 The Company may assign the Contract or any part of it to any person, firm or company.

15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **16. FORCE MAJEURE**

16.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **17. TERMINATION**

17.1 The Company shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Customer written notice, whereupon all work on the Contract shall be discontinued without liability to the Company, if:

17.1.1 the Customer commits a material breach of any of these Conditions; or

17.1.2 any distress, execution or other process is levied upon any of the assets of the Customer; or

17.1.3 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose

only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

17.1.4 the Customer ceases or threatens to cease to carry on its business; or

17.1.5 the financial position of the Customer deteriorates to such an extent that in the opinion of the Company the capability of the Customer to adequately fulfil its payment obligations under the Contract has been placed in jeopardy.

17.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **18. GENERAL**

18.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

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

18.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **19. COMMUNICATIONS**

19.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic mail:

19.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company or in the case of faxes or electronic mail to the fax number or electronic mail address notified to the Customer by the Buyer from time to time; or

19.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer or in the case of faxes or electronic mail to the fax number or electronic mail address notified to the Customer by the Buyer from time to time.

19.2 Communications shall be deemed to have been received:

19.2.1 if sent by pre-paid first class post, two Working Days after posting (exclusive of the day of posting); or

19.2.2 if delivered by hand, on the day of delivery; or

19.2.3 if sent by fax or electronic mail on a Working Day prior to 4.00 pm, at the time of transmission and otherwise on the next Working Day.

19.3 Communications addressed to the Company shall be marked for the attention of the financial controller.