

KELLOGG's
The Kellogg Building, Talbot Road, Manchester M16 0PU (Registered Office)

CONDITIONS OF PURCHASE OF GOODS AND WORKS

1. DEFINITIONS

In these Conditions the following expressions will have the following meanings unless inconsistent with the context:

(a) "Asbestos" means chrysotile, crocidolite, amosite, actinolite, tremolite and fibrous anthophyllite, any mixture containing any of the said materials and any other like substance having an adverse effect on man.

(b) "Associated Companies" means in relation to any company, any company which is at any time its holding company or a subsidiary of it or of its holding company as those terms are defined in section 736 and 736A of the Companies Act 1985.

(c) "Buyer" means Kellogg Company of Great Britain Limited, Kellogg Marketing and Sales Company UK Limited, Kellogg Management Services (Europe) Limited or Portable Foods Manufacturing Company Limited.

(d) "Conditions" means the standard terms and conditions of purchase set out in this document.

(e) "Contract" means any contract between the Buyer and the Supplier for the sale and purchase of Goods and/or supply of Works formed in accordance with these Conditions.

(f) "Delivery Date or Dates" means the date or dates specified in the Purchase Order for the delivery of the Goods or the performance of the Works.

(g) "Drawings, Writings and Tools" means drawings, Specifications, blue prints, plans, sketches, writings, calculations, manuscripts, designs, Photographs, dies, patterns, tools and any electronic images, discs or data.

(h) "Goods" means the articles or things or any of them described in the Purchase Order.

(i) "Intellectual Property Rights" means all intellectual and industrial property rights including, without limitation, patents, know-how, confidential information, registered trade marks, registered or unregistered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions comprised within and/or relating to the Goods, the Works or Drawings, Writings and Tools and/or any other materials in any medium relating directly or indirectly to the Goods, Works or Drawings, Writings and Tools.

(j) "Photographs" means photographic prints, negatives, slides and all digital images, together with all materials required to produce the same.

(k) "Premium Items" means Goods which the Buyer intends to use for promotional or advertising purposes and to be offered in some way or another to purchasers or consumers of the Buyer's products.

(l) "Purchase Order" means the purchase orders for the supply of Goods and/or the performance of Works sent by the Buyer to the Supplier in the form of the Buyer's document entitled "Purchase Order", and any amendment thereof sent by the Buyer, and any call-off letter consequent thereon and any Specifications, Drawings, Writings and Tools, or other items sent therewith or referred to therein.

(m) "Quotation" means any quotation given to the Buyer from the Supplier for the supply of Goods and/or the performance of Works.

(n) "Specification" means the technical description of the Goods or the Works contained in or referred to in the specification delivered to the Supplier, whether with these Conditions or contained in or referred to in or annexed to the Purchase Order or otherwise, whether or not specifically entitled "Specification".

(o) "Stage Payments" has the meaning set out in Condition 22.

(p) "Supplier" means the person, firm or company to whom the Purchase Order is addressed and shall include the Supplier's personal representatives, successors and permitted assigns.

(q) "Works" means such labour, methods, services, materials, Goods, transportation or other facilities as may be described in or be necessary to fulfil the requirements of the Purchase Order.

2. CONDITIONS

(a) Unless otherwise agreed in writing and signed by a director or the company secretary of the Buyer and a director or company secretary or the principal or a partner of the Supplier:

(i) these Conditions, together with the Purchase Order, shall be the terms and conditions governing the Contract and shall override any representations promises terms and conditions whatsoever stipulated incorporated or referred to by either party. The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Buyer which is not set out in the Contract, the Purchase Order or Specification. However, nothing in this Condition 2(a)(i) will exclude any liability which one party would otherwise have to the other party in respect of any statements it has made fraudulently to the other party; and

(ii) Supplier and Buyer should conduct trade electronically. This shall mean that Supplier and Buyer shall replace paper methods used (if any) to issue and exchange Purchase Orders (and related credit sales) and payments to an electronic method of exchange.

(iii) any conditions of sale of the Supplier whether referred to in any Quotation, acknowledgement of Purchase Order or otherwise shall be of no effect.

(b) Any variation of the Purchase Order or these Conditions shall become binding only if agreed in writing by a duly authorised representative of the Buyer and of the Supplier.

(c) The Buyer's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver express or implied by the Buyer in respect of any breach shall operate as a continuing waiver or as a waiver of any other breach.

(d) In the event of conflict between these Conditions and any terms or conditions specifically set out in the Purchase Order or the Specification, the terms or conditions so set out in the Purchase Order or the Specification shall prevail.

3. PRICE

The price stated in the Purchase Order for the Goods or the Works is a fixed price and shall not be varied for any reason whatsoever (except only for a variation in the rate of any applicable Value Added Tax chargeable to the Buyer and included in the price) unless expressly agreed in writing by a duly authorised representative of the Buyer and of the Supplier. Unless otherwise stated in the Purchase Order the price is inclusive of all charges, including but not limited to, packaging material, packing, carriage, insurance and delivery of Goods to the place or places specified in the Purchase Order, VAT and any duties, levies and taxes of whatsoever nature applicable to the supply of the Goods or the Works.

4. ACKNOWLEDGEMENT AND ACCEPTANCE OF ORDER

(a) The Buyer shall only be bound by its Purchase Order if the Supplier notifies its acceptance thereof promptly in writing.

(b) Delivery of the Goods or commencement of performance of Works will be deemed conclusive evidence of the Seller's acceptance of these Conditions and the relevant Purchase Order.

5. PURCHASE ORDER NUMBER

The Purchase Order Number specified in the Purchase Order must appear on all invoices, packaging slips, despatch advice notes and all correspondence (without exception) relating to the Goods or Works the subject of the Purchase Order.

6. DESPATCH NOTES

A despatch advice note must be supplied by the Supplier to the Buyer at the time of delivery of Goods, clearly stating full details of Goods despatched.

7. ACCEPTANCE PROPERTY AND RISK

(a) Goods or Works shall only be accepted by the Buyer (notwithstanding any payment that may have been made therefor) after they:

(i) have satisfied all requirements and passed all tests specified or referred to in the Purchase Order and these Conditions, or otherwise reasonably required by the Buyer and notified to the Supplier (on or before the date of the Purchase Order); and

(ii) have thereafter been accepted by and to the full satisfaction of the Buyer by written notice to the Supplier (which the Buyer will not unreasonably withhold or delay).

(b) Subject to Condition 22 (c):

(i) Property in Goods shall pass to the Buyer only upon acceptance pursuant to this Condition 7 or upon payment therefor if earlier; and

(ii) Property in Works (other than Goods forming part thereof) shall pass to the Buyer upon becoming part of the Buyer's premises, or upon acceptance if earlier.

(c) Until property has passed to the Buyer (or becoming part of the Buyer's premises) Goods or Works shall remain at the sole risk of the Supplier who shall insure the same in the name of the Supplier against all insurable risks which are likely to affect the same with insurers and on terms approved by the Buyer. The Supplier shall, if required in writing by the Buyer, provide to the Buyer satisfactory evidence of such insurance and payment of the current premiums.

8. ACKNOWLEDGEMENT OF DELIVERY OF GOODS

(a) Goods shall be properly packed, secured and despatched at the Supplier's expense to arrive in good condition by the Delivery Date or Dates and at the place or places specified in the relevant Purchase Order.

(b) In order to confirm receipt of Goods the Supplier shall obtain on delivery the signature of an authorised representative of the Buyer or the nominated person to whom the Supplier has been instructed to effect delivery of Goods. This confirmation shall be evidence of receipt only but not of the Goods being of the condition or in the volume specified in the Purchase Order and these Conditions and shall not of itself amount to acceptance of the Goods pursuant to Condition 7.

(c) Unless otherwise agreed in writing by the Buyer and the Supplier, delivery shall not be made on Saturdays, Sundays or Public Holidays, after 3.30pm Monday to Wednesday, or after 3.00pm on Thursday and Friday.

(d) Notwithstanding Condition 12(c), the Supplier may not deliver the Goods by separate instalments or perform the Works in stages unless agreed in writing by the Buyer.

9. QUALITY AND DESCRIPTION

(a) All Goods and Works shall:

(i) Conform in all respects with the particulars and requirements contained in the Purchase Order and these Conditions. It is the intention of the Contract to provide for a completed job of the kind required by the Purchase Order, which shall be complete in every respect, notwithstanding that every item necessarily involved is not mentioned particularly therein. The Supplier shall not avail itself of any manifestly unintentional error or omission in Drawings, Writings and Tools.

(ii) Correspond with their description.

(iii) Be of sound design, materials and workmanship.

(iv) Be equal in all respects to any samples provided by the Supplier and approved by the Buyer.

(v) Be of satisfactory quality.

(vi) Be free from defects.

(vii) Be capable of the standard of performances specified.

(viii) Be fit for such purpose or purposes as shall be made known by the Buyer to the Supplier (or if no specific purpose has been made known, be fit for the purposes of the Buyer's business) and in this respect the Buyer relies on the Supplier's skill and judgement.

(ix) Be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health, safety or environment.

(b) The Supplier will comply with all applicable standards, regulations and/or other legal requirements and/or voluntary codes of conduct concerning the manufacture, packing and delivery of the Goods and/or provision of Works.

10. BUYER'S RIGHT TO REJECT

The Buyer reserves the right to reject at any time before acceptance (notwithstanding delivery or performance) the whole (or any part) of the Goods or the Works the subject of the Purchase Order if any part of the Goods or the Works does not correspond with the Purchase Order and these Conditions in quality, fitness, description, performance or quantity.

11. INDEMNITY

(a) The Supplier shall indemnify, keep indemnified and hold harmless the Buyer from and against all losses (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), liabilities, claims, expenses, demands, suits, actions, damages, costs, proceedings, judgments and expenses of whatsoever nature in respect of loss of or damage to any property whatsoever (including that of the Buyer, its suppliers, agents, sub-contractors, customers and consumers, and any of their respective employees) or injury to or death of any person whatsoever (including the Buyer, its suppliers, agents, sub-contractors, customers and consumers, and any of their respective employees) or other loss or damage sustained by any such persons, howsoever caused and wheresoever occurring that may arise or occur as a result of either:

(i) Goods or Works not being in accordance with the Purchase Order and these Conditions; or

(ii) any act or omission whatsoever of the Supplier its employees, agents and/or sub-contractors.

(b) The Supplier shall effect and maintain insurance against all insurable risks the subject of the Supplier's indemnity in Condition 11 (a). Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Buyer upon request. The Buyer shall have the right to demand that the Supplier shall effect and maintain additional insurance or alternative insurance against all insurable risks the subject of the Supplier's indemnity in Condition 11 (a) where the Supplier's insurer, or the terms of the Supplier's insurance, are not satisfactory to the Buyer.

12. LATE DELIVERY OR PERFORMANCE

(a) The Delivery Date or Dates is or are of the essence of the Contract between the Buyer and the Supplier for the supply of the Goods or the performance of the Works.

(b) If delivery of the Goods or performance of the Works or any part thereof is not made in accordance with the Delivery Date or Dates the Buyer may at its option (and without prejudice to any other rights the Buyer may have) without liability forthwith by written notice to the Supplier cancel the delivery of any undelivered balance of the Goods or the performance of any unperformed balance of the Works.

(c) If the Purchase Order provides for delivery of the Goods by the Supplier by instalments or performance of the Works by the Supplier by stages and the Supplier shall default in delivery or performance of one or more instalments or stages the Buyer shall have the option specified in Condition 12(b) hereof.

13. CLAIMS

All monies for which the Supplier is liable to the Buyer may be deducted from any monies due or which may become due to the Supplier.

14. INSOLVENCY OF SUPPLIER

Without prejudice to the Buyer's rights under these Conditions, the Buyer may by written notice forthwith and without liability cancel the delivery of any undelivered balance of the Goods or the performance of any unperformed balance of the Works if the Supplier becomes insolvent or ceases or threatens to cease to carry on business or being an individual or partnership becomes bankrupt or enters into a composition or arrangement with his creditors or has a receiving order made against him or being a company goes into liquidation or suffers a receiver to be appointed or a notice of appointment of an administrator is filed at court or a valid notice of intent to appoint an administrator is given to the Supplier.

15. COMPLIANCE WITH LAW

(a) The Supplier shall ascertain, comply with and observe strictly in respect of and in connection with the Goods and their supply and/or with the Works and their supply or performance and with the employment of any labour used in connection therewith all EEC legislation and all Acts of Parliament, statutory provisions and regulations, directives, common law duties, by-laws, regulations, determinations or codes of practice of any Government, Local Authority or other public body of whatsoever nature and by whomsoever imposed, and all recommendations and codes of practice of any relevant trade association. Any necessary planning permissions shall be taken out by the Buyer at its own expense. Any necessary building permits relevant to Works shall be taken out by the Supplier and shall be paid for by the Buyer. All other licences, permits, etc., that maybe necessary shall be taken out by the Supplier at its own expense. If the Supplier discovers that any Drawings, Writings and Tools are at variance with legal requirements, it shall promptly notify the Buyer in writing.

(b) The Supplier shall indemnify, keep indemnified and hold harmless the Buyer from and against all losses (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), liabilities, claims, expenses, demands, suits, actions, damages, costs, proceedings, judgments and expenses of whatsoever

nature in respect of loss of or damage to any property whatsoever (including that of the Buyer, its suppliers, agents, sub-contractors, customers and consumers, and any of their respective employees) or injury to or death of any person whatsoever (including the Buyer, its suppliers, agents, sub-contractors, customers and consumers, and any of their respective employees) or other loss or damage sustained by any such persons, arising in consequence of or in connection with any breach non-compliance or non-observance of such EU legislation, Acts of Parliament, statutory provisions and regulations, directives, common law duties, by-laws, regulations, determinations and codes of practice, as aforesaid.

16. PATENT TRADEMARK DESIGN COPYRIGHT AND OTHER RIGHTS

(a) The Supplier warrants that neither the Goods nor the Works, nor the Buyer's use thereof for the purpose intended, will infringe any patent registered design trademark copyright or other intellectual property right and shall indemnify the Buyer against all actions claims demands costs proceedings charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement or alleged infringement of any such intellectual property right.

(b) The Buyer reserves the right to reject Goods or Works for breach of Condition 16 (a) notwithstanding any previous acceptance thereof.

(c) Without prejudice to the accrued rights of the Buyer, the Supplier shall use its best endeavours to remedy any breach of its warranty under Condition 16 (a) hereof at the earliest possible moment either by securing, at its own expense, the right for the Buyer to continue use or operation of the Goods or the Works by procuring a licence in respect of the right infringed, or by modifying or replacing at its own expense such part or parts of the Goods or the Works as is necessary to render them non-infringing and without any change in quality or performance.

(d) The Purchase Order is for outright purchase of the Goods or Works specified. Where such Goods or Works are designed made or performed specially for the Buyer, all Intellectual Property Rights therein (including, without limitation, all rights in Drawings, Writings and Tools prepared or constructed by the Supplier and paid for by the Buyer) shall pass to the Buyer upon acceptance of the Goods or Works or upon termination of the Contract, including the right on the part of the Buyer to protect the same by patent, design, trademark, copyright or otherwise, and the Supplier warrants that it has full right and power to grant or assign all such rights without limitation as to the manner of use thereof by the Buyer, and that the said Drawings, Writings and Tools shall be delivered to the Buyer.

17. DRAWINGS

(a) Any Drawings, Writings and Tools prepared by the Supplier and requiring the Buyer's approval shall be submitted by the Supplier to the Buyer without unreasonable delay and in any case in good time in order to meet the Delivery Date or Dates and no Works affected thereby shall be started until the Buyer's written approval to such Drawings, Writings and Tools has been obtained. Such approval shall not relieve the Supplier from fulfilling all its obligations and guarantees under the Contract.

(b) The exactness of dimensions given on any Drawings, Writings and Tools furnished by the Buyer to the Supplier is not guaranteed. The Supplier shall therefore satisfy itself as to the accuracy of all dimensions. In all cases of inter-connection of Goods or Works with other work the Supplier shall verify at the site where the Goods are to be delivered or the Works performed any dimensions relating to the inter-connection with such other work. Without prejudice to the Buyer's accrued rights, any errors due to the Supplier's failure to verify any such dimensions shall be promptly rectified by the Supplier without cost to the Buyer.

(c) Any Drawings, Writings and Tools furnished by the Buyer to the Supplier are loaned to the Supplier only for its own use in its performance of the requirements of the Purchase Order and the Supplier shall not use or permit the use of any of the said Drawings, Writings and Tools for any other purpose without the Buyer's prior written consent. The said Drawings, Writings and Tools shall at all times remain the property of the Buyer and be treated by the Supplier as strictly confidential pursuant to Condition 29. The Supplier agrees not to reproduce, copy or publish or permit the reproduction, copying or publication of the said Drawings, Writings and Tools or any part of them, and will take all reasonable precautions to prevent any such occurrence, and will return all the said Drawings, Writings and Tools to the Buyer upon completion or termination of the Contract.

18. ACCESS TO PREMISES, INSPECTION AND TESTING

(a) The Supplier agrees to provide all information reasonably requested by the Buyer, and to provide, upon receipt of reasonable notice, access to the Buyer and its duly authorised servants and agents to all locations, plants, offices and facilities in or at which operations are carried on in performance of the requirements of any Purchase Order.

(b) The Buyer shall have the right at all reasonable times to inspect and test Goods or Works in progress. The Supplier shall make all necessary arrangements and provide all reasonable facilities and access for such inspection and testing, whether at the premises of the Buyer or elsewhere. The Supplier shall give reasonable notice to the Buyer as to the time when each part of the Goods or Works will be ready for such inspection. The Buyer may point out any Work (in whole or part) considered to be defective or not in accordance with the requirements of the Purchase Order at the time of inspection, but this shall in any case be without prejudice to the Buyer's rights under these Conditions and in particular under Condition 10 to accept or reject after completion of delivery of the Goods or performance of the Works.

19. CONDUCT OF SUPPLIER OF WORKS ON BUYER'S PREMISES

(a) The Supplier of Works to be performed on the Buyer's premises shall:

(i) co-operate with the Buyer in all matters pertaining to the Works the subject of the Purchase Order to the end that such Works may proceed continuously and industriously to as early a completion as is practicable within the Delivery Date or Dates therein specified and without causing any unnecessary disturbance to the activities undertaken at the Buyer's premises;

(ii) comply with all recognised safety standards and such other safety standards as the Buyer may establish in the performance of the said Works;

(iii) comply with the Buyer's regulations concerning the conduct of persons on the Buyer's Premises and promptly discontinue from employment on the Works on the Buyer's premises any of the Supplier's employees or other persons under the control of the Supplier or its sub-contractors who appear to the Buyer to be intemperate, disorderly or in any way unqualified to perform the work entrusted to them;

(iv) perform the Works in such manner and at such times that it shall not unreasonably encumber the Buyer's premises with materials or interfere with the performance of other work being done at the site by the Buyer or others;

(v) if any part of the Works depends upon the work of any other person, inspect and promptly report to the Buyer any condition that renders such work unsuitable therefor;

(vi) inform all persons it employs or otherwise engages in the performance of Works on the Buyer's premises that they will be handed a copy of the Buyer's regulations concerning the conduct of persons on the Buyer's premises, and that they must adhere strictly to the rules laid down therein;

(vii) obtain and complete a "Permit to Work" from the Buyer's Plant Engineering Shift or other designated Office; and

(viii) satisfy itself that all matters such as access to the site and site conditions are adequate for the purpose of fulfilling all requirements of the Purchase Order.

(b) Persons employed or otherwise engaged by the Supplier in the performance of Works on the Buyer's premises, or the supervision thereof, shall not be changed without prior consultation with the Buyer's Project Engineer or other designated employee or representative.

(c) When Works are to be carried out in a food processing area of the Buyer's premises, or when the Supplier moves from one area to another, the Supplier shall confirm with the Buyer's Project Engineer or other designated employee or representative that it is convenient to commence work or move to another area and shall take all precautions to prevent any possible contamination. Without prejudice to the generality of the foregoing, the extent of such precautions shall be agreed with the Buyer's Project Engineer or other designated employee or representative and such Works shall not commence or proceed unless all covers and protective screens so agreed are in place.

(d) Methods of working upon, and the moving of materials to or from the Buyer's premises, shall be agreed with the Buyer's Project Engineer or other designated employee or representative and shall not be changed without his agreement.

(e) The Buyer's Quality Assurance Department has authority at all times to stop work in any food producing area which, in its opinion, may result in contamination of food, and in the absence of the Buyer's Project Engineer or other designated employee or representative, the instruction of the Buyer's Quality Assurance Inspector shall be accepted as final.

20. FITTING OF WORKS AND REMOVAL OF DEBRIS FROM BUYER'S PREMISES

(a) The Supplier shall provide all labour, tools, hoists, craneage, materials, scaffolding, false work, etc., as maybe necessary for the performance of Works on the Buyer's premises. The Supplier shall maintain a competent superintendent at the site at all times to supervise such Works and shall employ a competent engineer to determine any lines and elevations that maybe necessary. The Supplier shall be responsible for the correctness of the layout of such Works.

(b) The Supplier shall do such cutting, fitting and patching as shall be necessary to install Works on the Buyer's premises, and shall, at all points of contact, properly fit it to existing work. The Supplier shall not endanger any work by cutting, digging or otherwise, and shall not cut or alter the work of any other person except with the authorisation of the Buyer.

(c) Upon completion of Works on the Buyer's premises and earlier or more often if the Buyer so requires, the Supplier shall at its own expense remove and clear away therefrom all unused material, rubbish and debris. The Supplier shall leave the site of the said Works free and clear of all obstructions and hindrances and in as good condition as it was prior to its commencement of the Works.

21. SURETY BOND

If and when so required by the Buyer, the Supplier shall furnish to the Buyer a corporate surety bond covering the faithful performance of the Contract and the payment of all obligations arising thereunder, the said bond to be in such form and to be procured from such company or companies or clearing bank as shall be approved by the Buyer. The premium for any such surety bond is not included in the price for the Goods or the Works and the Buyer will defray the cost thereof and will remunerate the Bonding Company or clearing bank directly.

22. STAGE PAYMENTS

Stage Payments for Goods or Works shall not be made unless the same are specifically provided for in the Purchase Order. In the event that Stage Payments are so provided for, they shall be made only upon satisfaction of the following provisions of this Condition and otherwise in accordance with these Conditions:

(a) The amount to be paid on any Stage Payment shall, subject to agreement to the contrary between the parties, be the total value of Works or Goods already performed on or delivered to the Buyer's designated premises for use thereon in pursuance of the Purchase Order, less any Stage Payments previously paid under this Condition in relation to the Purchase Order, provided that such Stage Payments shall only include the value of the said Works or Goods as from such time as they are reasonably, properly and not prematurely brought to or performed or the Buyer's designated premises in accordance with the Purchase Order and then only if, without prejudice to the Supplier's other obligations under these Conditions, they are adequately protected against weather or other casualties.

(b) The amount to be paid on any Stage Payment may, at the discretion of the Buyer, include the value of any materials or Goods before delivery thereof to the Buyer's designated premises provided that:

(i) Such materials or Goods are intended for incorporation in or delivery to the Buyer's designated premises.

(ii) Nothing remains to be done to such materials or Goods to complete the same up to the point of their inclusion in or delivery to the Buyer's designated premises.

(iii) Such materials or Goods have been and are set apart at the premises where they have been manufactured or assembled or are stored, and have been clearly and visibly marked, individually or in sets, either by letters or figures or by reference to a predetermined code, so as to identify:
– Where they are stored on the Supplier's premises, the Buyer, and in any other case the person to whose order they are held; and

– Their destination as being the Buyer's designated premises.

(iv) Where such materials or Goods were ordered by the Supplier from a third party, the contract for their supply is in writing and expressly provides that the property therein shall pass unconditionally to the Supplier not later than the happening of the events set out in paragraphs (ii) and (iii) of this sub-condition.

(v) Where such materials or Goods were manufactured or assembled by a sub-contractor, the sub-contract is in writing and expressly provides that the property therein shall pass unconditionally to the Supplier not later than the happening of the events set out in paragraphs (ii) and (iii) of this sub-condition.

(vi) The materials or Goods are in accordance with the requirements of the Purchase Order and these Conditions.

(vii) The Supplier furnishes to the Buyer proof that the property in such materials or Goods is in the Supplier and that the appropriate provisions set out in paragraphs (i) to (vi) of this sub-condition have been complied with.

(c) It is hereby expressly stated for the avoidance of doubt that where any Stage Payment is made in accordance with this Condition:

(i) Property in such Works or Goods as are the subject of a Stage Payment shall pass to the Buyer upon payment to the Supplier of the said Stage payment.

(ii) The provisions of these Conditions and in particular (but without prejudice to the generality of the foregoing) of Conditions 7 and 10 hereof shall continue to apply to the said Works or Goods.

(d) In no event shall the Buyer be required to make any payment which, in its opinion, would leave the unpaid balance of the price insufficient to complete the requirements of the Purchase Order.

23. LIENS

(a) The Supplier expressly waives and releases any and all liens or claims or rights of lien on any of the Goods supplied to or Works performed on the Buyer's premises or any part thereof on account of Goods delivered to or Works performed by it on the Buyer's premises in respect of which property has passed to the Buyer.

(b) At any time whether before or after final payment is made to the Supplier of Goods supplied to or Works performed on the Buyer's premises, the Supplier shall, if the Buyer so requests, furnish evidence satisfactory to the Buyer that all accrued rights, liens, invoices, claims, demands and debts for all Goods supplied or Works performed by any third party in relation to the Purchase Order are fully paid, satisfied and released.

(c) If during the progress of Works on the Buyer's premises the Supplier shall allow any indebtedness to accrue for Works performed by sub-contractors or others and shall fail to pay and discharge such indebtedness within five days after demand made, then the Buyer at its discretion may, during the period for which such indebtedness shall remain unpaid, withhold from any monies due to the Supplier a sum not exceeding the amount of such indebtedness and may apply any sum so withheld toward the discharge of such indebtedness (and if it does so such payment shall operate as a complete discharge of the Buyer's liability to the Supplier of an equivalent sum due under the Contract), and in any event, and without prejudice to any other rights under these Conditions, may by two days written notice without liability cancel the performance of any unperformed balance of the Works.

24. PREMIUM ITEMS

(a) Where the Goods required by a Purchase Order are Premium Items they are intended to be the subject of a special offer for a limited period by the Buyer to purchasers and consumers of certain of the Buyer's food products. The Supplier is hereby notified that the Buyer's promotional plans are secret and the Supplier undertakes to keep the Purchase Order confidential and not to disclose any matter relating thereto to any person save that such information as may be necessary in order to fulfil the requirements of the Purchase Order may be revealed to the Supplier's permanent employees who are required to know the same for the proper performance of their duties and who are first made aware of the Supplier's confidentiality obligation to the Buyer pursuant to this Condition 24.

(b) As long as the Buyer shall advertise or offer or pack the Premium Items, it shall have the right to order and the Supplier agrees to supply, further quantities of such Premium Items from time to time at the price and upon the terms specified in the original Purchase Order, subject to any new Delivery Date or Dates that may be specified.

(c) The Buyer may, following the close of any promotion based upon the Premium Items, dispose of such remaining stocks of the Premium Items as it may then have on hand in any manner which it may deem appropriate including, but not limited to, salvage sales, sale for distribution through normal retail channels and further use as a Premium Item in any country.

(d) Without prejudice to these Conditions, and in particular to Conditions 11 and 12, the Supplier is hereby notified that the Buyer expects to print large numbers of cartons for its food products which will carry material featuring the Premium Items. The Buyer may also make expenditures and commitments in connection with its advertising and sales promotion activity which may feature the Premium Items. Such printing expenditures and commitments may occur both before and after the Delivery Date or Dates, and the Buyer's plans with respect to such printing, expenditures and commitments are dependent upon delivery by the Supplier of Premium Items in accordance with the requirements of the Purchase Order.

(e) Where Premium Items the subject of the Purchase Order are to incorporate or bear copyright material, trade marks, product names or brand names, belonging to, or utilised by the Buyer or licenced to the Buyer by any third party, the Supplier undertakes not to sell or dispose of such Premium Items or any copy, reproduction, simulation, or imitation thereof, in any manner or form, to any person, firm or corporation other than the Buyer, without the written consent of a Director of the Buyer, which consent, if given, shall be the subject of a separate written agreement between the Buyer and the Supplier.

(f) Without prejudice to these Conditions, and in particular to Condition 16, where Premium Items the subject of a Purchase Order are supplied under or bearing a name or device that is or might be construed to be a trademark, trade name, brand name or device capable of protection under law, then (save where such name or device is of a kind specified in paragraph (e) of this Condition) the Supplier warrants that it has rights to use such name or device with relation to the Premium Items and authorises the Buyer to use such name or device and any and all variations thereof in connection with the

Premium Items, and on package panels, advertising, promotional and other materials relating to any promotion based on the Premium Items, and shall indemnify the Buyer in relation thereto in accordance with Condition 17.

(g) Save where the Premium Items are of a kind specified in paragraph (e) of this Condition (in which case the provisions thereof shall apply in relation thereto), for so long as the Buyer shall offer the Premium Items to purchasers or consumers of its food products or pack food products bearing such an offer, and for an additional six months after formal written notification by the Buyer to the Supplier of cessation of the Buyer's offer, the Supplier shall not supply the Premium Items, or any items of the same or similar description as the Premium Items, to any manufacturer of a product which is competitive with any of the Buyer's food products for the operation of a promotional scheme.

(h) (i) Without prejudice to these Conditions, the Supplier warrants that all materials used in the manufacture or assembly of the Premium Items the subject of the Purchase Order are non-toxic, non allergic and completely harmless for normal use and particularly (but without prejudice to the generality of the foregoing) for use by or in proximity to children.

(ii) Without prejudice to these Conditions, where the Buyer notifies the Supplier that the Buyer intends to insert the Premium Items the subject of the Purchase Order into packages of the Buyer's food products in such a way that the Premium Items are likely to come into contact with or be in close proximity to such food products, the Supplier warrants that the Premium Items will be prepared in such a way that they do not contaminate such food products, nor impart any odour or taste to such food products. In the event that the Buyer, or any Government Body or other Authority having jurisdiction over it or its food products, finds that by reason of the presence of the Premium Items, such food or any part of it is or is likely to become contaminated or unfit or otherwise inappropriate for use as food for human consumption, the Supplier shall forthwith (but without prejudice to the Buyer's rights under these Conditions) take such action as may be necessary to remedy the situation and to prevent such occurrence in the future.

(iii) The Supplier shall indemnify the Buyer against all losses, liabilities, claims, demands, suits, actions, damages, costs and expenses of whatsoever nature arising in respect of breach of the warranties contained in this paragraph (h).

(j) The Supplier of Premium Items is reminded of its obligations and liabilities under these Conditions and in particular (but without prejudice to the generality of the foregoing) under Conditions 11 and 15 and paragraph (h) of this Condition, and shall effect insurance against all those risks the subject of its indemnities with insurers and on terms approved by the Buyer. Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Buyer upon request.

25. HAZARDOUS MATERIALS

(a) The Supplier warrants that all Goods supplied to and Works performed for the Buyer shall be free from Asbestos.

(b) If the Supplier is unable to comply with the warranty contained in paragraph (a) of this Condition the Supplier shall immediately and in any event before acceptance of the Purchase Order inform the Buyer that the Goods or Works contain Asbestos together with the nature and amount thereof.

(c) The Buyer reserves the right to reject at any time before acceptance (notwithstanding delivery or performance) the whole or any part of the Goods or Works the subject of the Purchase Order in the event of the Supplier failing to comply with the provisions of paragraph (b) of this Condition.

(d) The Supplier shall strictly observe the requirements concerning the handling removal and disposal of Asbestos contained in the Buyer's Regulations or at law concerning the conduct of persons on the Buyer's premises.

(e) The Supplier of Goods to or Works to be performed on the premises of the Buyer shall cease work and immediately inform the Buyer's Project Engineer or other designated employee or representative immediately in the event that any Asbestos is encountered in fulfilling the requirements of the Purchase Order.

(f) The Supplier shall indemnify the Buyer against all losses, liabilities, claims, demands, suits, actions, costs, damage and expenses of whatsoever nature arising in respect of any breach of this Condition by the Supplier.

(g) The Supplier is reminded of its obligations under this Condition and in particular (but without prejudice to the generality of the foregoing) under Conditions 11 and 15, and shall effect insurance against all those risks the subject of its indemnities with insurers and on terms approved by the Buyer. Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Buyer on request.

26. PHOTOGRAPHY

Where it shall be necessary for Photographs to be taken by the Supplier to fulfil the requirements of the Purchase Order, ownership of the Photographs, together with all Intellectual Property Rights therein, shall pass to the Buyer in accordance with the provisions of Conditions 7 and 16 respectively.

27. ASSIGNMENT

(a) This Agreement is personal to the Supplier and the Supplier shall not without the written consent of the Buyer assign, mortgage, cause to be encumbered by a lien or otherwise, charge, dispose of any of its rights under or sub-let the Contract the subject of the Purchase Order for the supply of Goods or the performance of Works or any part thereof. Consent, if given, shall not relieve the Supplier from its obligations under the said Contract.

(b) The Buyer may assign any of its rights or obligations under the Contract to any of its Associated Companies.

28. SUPPLIER'S GUARANTEE

Without prejudice to the other Conditions and any additional obligations imposed by the Purchase Order the Supplier agrees to remedy or replace with all possible speed, at no cost to the Buyer, any part or parts of Goods or Works which during the first year of actual use (whether by the Buyer or any other person) prove to be defective or unsuitable for the purpose specified, whether such is due to poor workmanship or poor material or any other cause not attributable to misuse by the user, and to reimburse the Buyer for all costs incurred by the Buyer in connection with such repair or replacement. Provided that where the Specification for Goods the subject of a Purchase Order indicates, upon a proper construction thereof, that a period of less than one year would be more appropriate as a guarantee period (as may be the case, for example, in respect of Goods which are intended to be used as ingredients in the Buyer's food products), then such shorter period shall be substituted for the period of one year first specified in this Condition.

29. CONFIDENTIALITY

(a) The Supplier will comply with the provisions of the Buyer's Third Party Confidentiality Agreement (see Appendix) which shall apply to the Contract the subject of any Purchase Order and the Supplier will keep all information disclosed to it in pursuance of or in contemplation of any Purchase Order (and whether before or after the date of the Purchase Order) in confidence and in particular will:

(i) not disclose it to any person or company (save that such information as may be necessary in order to fulfill the requirements of the Purchase Order may be revealed to the extent necessary only to the Supplier's trusted employees who are required to know the same for the proper performance of their duties and persons or companies (if any) approved by the Buyer under Condition 27(a) in which event the Supplier shall place such employees, persons or companies under the same duty of confidentiality); and/or,

(ii) not use the same for any purpose other than pursuant to the Purchase Order.

(b) The Buyer shall be under no duty of confidentiality in relation to any information disclosed by the Supplier to the Buyer in pursuance of or in contemplation of any Purchase Order (whether before or after the date of the Purchase Order) unless the Supplier has notified the Buyer that the information is a trade secret or is given in confidence by the Supplier to the Buyer.

(c) Neither Party shall be obliged to keep in confidence any information disclosed to it by the other which the recipient can show;

(i) was known to it prior to its receipt from the discloser, otherwise than under an express or implied obligation of confidence,

(ii) was available to the general public prior to its receipt in consequence of the Purchase Order by the recipient, or which thereafter becomes known to the general public through no act or failure to act on the part of the recipient.

(iii) is or has been developed by the recipient independently of the information received by the recipient in consequence of the Purchase Order.

30. PUBLICITY

The Supplier shall not on any account at any time advertise or represent itself or hold itself out, whether to its own suppliers or to any other person or persons, that it is or has been the Supplier of Goods or Works to the Buyer, whether in television or radio broadcasts, websites, newspapers, journals, periodicals or magazines, prospectuses, business letters, circulars or any other way whatsoever unless the Supplier has requested and the Buyer has given its prior express written authority so to do.

31. NOTICES

Any notice or consent required or authorised to be given under these Conditions may be served:

(a) by recorded delivery mail to the Registered or Head Office of the party to be served (and the notice shall be deemed to have reached the party to whom it is addressed if the Post Office Receipt Book for Recorded Delivery mail has been signed on behalf of the addressee in respect of the notice); or

(b) by facsimile (in which case the notice shall be deemed to have reached the party to whom it has been sent when the sender has received the answerback of the machine of the other party).

32. GENERAL

(a) Each right or remedy of the Buyer under any Contract is without prejudice to any other right or remedy of the Buyer under this or any other Contract.

(b) If any Condition, part of a Condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision or part of a provision will, to the extent required, be severed from that Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

(c) The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

33. PROPER LAW

These Conditions shall be construed in all respects in accordance with English Law and the Supplier hereby submits for the purpose of any proceedings to the exclusive jurisdiction of the English Courts

34. HEADINGS

The Headings to these Conditions are inserted for the convenience of reference only and shall not in any manner affect the construction meaning or effect of anything herein contained or govern the rights and liabilities of the Buyer and the Supplier.

SIGNED by an authorised representative for and on behalf of **Buyer**:

Name:

Date:

SIGNED by an authorised representative for and on behalf of **Supplier**:

Name:

Date:

APPENDIX
KELLOGG'S
THIRD PARTY CONFIDENTIALITY AGREEMENT

We acknowledge that we (which expression shall where the context so admits include any company or firm, and references to we, our, us etc. shall be construed accordingly) have been notified that the plant, equipment and processes relating to all the various food and other products produced from time to time at any premises of the Buyer or any of its Associated Companies ("Kellogg's"), and all information relating thereto and to all aspects of Kellogg's business in general, are secret and we agree that in being permitted access to Kellogg's premises and/or information we are under an obligation of secrecy in relation to all aspects of the said plant, equipment and processes, and all information relating thereto and to all aspects of Kellogg's business in general, and in consideration of Kellogg's allowing us and/or our employees access to their premises and/or information we undertake with Kellogg's as follows:

1. (a) The only individuals obtaining access to Kellogg's premises and/or information in reliance on this undertaking will be responsible employees of ours, and not sub-contractors or external advisers.

(b) We must seek Kellogg's prior written consent for any sub-contractors or external advisers to obtain access to Kellogg's premises and/or information the subject of this Agreement should we wish them so to do.

2. (a) No photographs, negatives, digital images, video recordings, sound recordings, copies, sketches or notes shall be made of the said plant, equipment, processes or information except with Kellogg's express prior written consent. Any photographs, negatives, digital images, video recordings, sound recordings, copies, sketches, or notes made will be treated as confidential, used only for the purpose (if any) indicated, and not be shown to any person without Kellogg's express prior written consent. Copies will in all cases be supplied to Kellogg's as soon as possible and without charge, and upon request the originals and all remaining copies will be delivered up to Kellogg's. Upon request the originals and all copies of any information supplied by Kellogg's will be returned to Kellogg's.

(b) We understand that Kellogg's will retain the copyright in any photographs, negatives, digital images, video recordings, sound recordings, copies, sketches or notes which may be made under 2(a) and we will do or procure to be done and execute or procure to be executed all such acts and documents as may be required of us by Kellogg's in order to vest such copyright in them.

3. No use whatsoever will be made of any information we or our employees may acquire in the course of our visits to Kellogg's premises or otherwise hereunder except for the purpose (if any) specified. Any information acquired will not be disclosed to any other person without Kellogg's express prior written consent. This obligation, as well as the obligations of confidence imposed by Common Law, shall not apply to any information:-

(a) which we can show was known to us prior to its receipt from Kellogg's or from any person having a confidential obligation to Kellogg's;

(b) which is or has been received by us from any third party not having a confidential obligation to Kellogg's;

(c) which was available to the general public prior to its receipt from Kellogg's or which thereafter becomes known to the general public through no act or failure to act on the part of us or our employees;

(d) which is developed by us independently of any information received from Kellogg's or from any person having a confidential obligation to Kellogg's.

4. In the event that we or our employees are allowed access to, or to remain in Kellogg's premises otherwise than under the supervision of a Kellogg's employee, we and our employees will:-

(a) Not enter or attempt to enter any parts of Kellogg's premises unless an access route has been designated or we are accompanied by a Kellogg's employee.

(b) use the route designated to gain access to and from such part of Kellogg's premises, and not deviate from the designated route.

5. We and our employees will observe all Kellogg's hygiene requirements and all reasonable instructions of Kellogg's personnel.

6. We will ensure that all employees, prior to their attending Kellogg's premises, or gaining access to Kellogg's information, are aware of the above provisions and that they accept them.

7 Our employees will be adequately supervised by us or a responsible supervisor in our employ and we or such supervisor will ensure that our employees observe the above provisions.

8. It is understood that if we or our employees are working under a contract whether covered by Kellogg's "Conditions of Purchase of Goods and Works" or by other conditions, that the above provisions are in addition to the terms of those conditions, and in no way vary or release us or our employees from the obligations under those conditions

9. We shall not on any account at any time advertise or represent ourselves or hold ourselves out to be or have been in a business relationship with Kellogg's or to be or have been given access to Kellogg's premises or to information supplied by Kellogg's or by any third party having a confidential obligation to Kellogg's whether in television or radio broadcasts, newspapers, journals, periodicals or magazines, prospectuses, business letters, circulars or any other way whatsoever unless we have requested and Kellogg's has given its prior express written authority so to do.

10. The terms of this Agreement shall apply to all information provided by Kellogg's or by any third party having a confidential obligation to Kellogg's and to all visits made by us or our employees to any part or parts of all or any of Kellogg's premises whatever the purpose and whenever the occasion of such provision of information or visit.

11. We understand that we will be held liable for any loss or damage caused to Kellogg's by any failure to observe the terms of this undertaking.