

CONDITIONS OF PURCHASE OF GOODS AND WORKS

1 DEFINITIONS

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

“**Associated Company**” 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 155 of the Companies Act, 1963;

“**Buyer**” means Kellogg European Logistics Services Company Limited;

“**Buyer Materials**” means any materials owned by the Buyer and used by the Supplier in the performance of the Contract;

“**Conditions**” means the standard terms and conditions of purchase set out in this document;

“**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, and under which a Purchase Order may be created;

“**Delivery Date**” means the date (or dates as the case may be) specified in the Purchase Order for the delivery of the Goods or the performance of the Works;

“**Force Majeure**” means any circumstances beyond the reasonable control of a party including without limitation acts of God, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood or epidemic;

“**Goods**” means the articles or things (or any part of them) or any of them described in the Purchase Order;

“**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 Ireland 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 Materials and/or any other materials in any medium relating directly or indirectly to the Goods, Works or Materials;

“**Materials**” means drawings, Specifications, blue prints, plans, recipes, Buyer plant and process information, innovation documentation, commercial agreements sketches, writings, calculations, manuscripts, designs, photographs, dies, patterns, tools and any electronic images, discs, files or data;

“**Photographs**” means photographic prints, negatives, slides and all digital images, together with all materials required to produce the same;

“**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;

“**Purchase Order**” means the purchase orders for the supply of Goods and/or the performance of Works sent by the Buyer or the call-off for the supply of Goods and/or the performance of the 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 Specifications, Materials, or other items sent therewith or referred to therein;

“**Quotation**” means any quotation given to the Buyer from the Supplier for the supply of Goods and/or the performance of Works;

“**Specification**” means the most recent technical description of the Goods or the Works contained in or referred to in the specification delivered to the Supplier by the Buyer as may be amended by the Buyer and provided from time to time, 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”;

“**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;

“**Third Party Confidentiality Agreement**” means a Confidentiality Agreement which will be provided by the Buyer to the Supplier as same may be required from time to time; and

“**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.

1.2 Construction

1.2.1 In these Conditions, the following rules apply:

- (i) a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (ii) a references to a party includes its successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re- enacted;

- (iii) the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa;
- (iv) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (v) a reference to “writing” or “written” includes faxes.

2 BASIS OF CONTRACT

- 2.1 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, 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.
- 2.2 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 Condition 2.1 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.
- 2.3 The Supplier and the Buyer shall conduct trade electronically. This means that, at a minimum, the Supplier and Kellogg shall replace paper methods used (if any) to issue and exchange purchase orders, invoices (and related credited notes), and payments with electronic methods of issue and exchange.
- 2.4 Any terms or conditions of sale of the Supplier whether referred to in any Quotation, acknowledgement of Purchase Order or otherwise or which the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing shall be of no effect.
- 2.5 The Buyer shall only be bound by its Purchase Order if the Supplier notifies its acceptance thereof promptly in writing.
- 2.6 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.

3 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 which are the subject of the Purchase Order.

4 ACCEPTANCE PROPERTY AND RISK

- 4.1 Goods or Works shall only be accepted by the Buyer (notwithstanding any payment that may have been made therefor) after they:
 - 4.1.1 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
 - 4.1.2 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).
- 4.2 Property in Goods shall pass to the Buyer only upon acceptance pursuant to this Condition 4 or upon payment therefor if earlier; and
- 4.3 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.
- 4.4 Until property has passed to the Buyer (or become 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.

5 DELIVERY OF GOODS

- 5.1 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 including, but not limited to, the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments in accordance with Condition with 5.7, the outstanding balance of Goods remaining to be delivered. The Supplier must also provide to the Buyer the certificate of analysis on delivery.
- 5.2 If the Supplier requires the Buyer to return any packaging material for the Goods to the Supplier, that fact must be clearly stated on the despatch advice note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.3 Goods shall be, at the Supplier’s expense, properly packed, secured and despatched in such manner as to reach their destination in good condition.
- 5.4 The Supplier shall deliver the Goods:
 - 5.4.1 by the Delivery Date (or Delivery Dates as the case may be); and
 - 5.4.2 to the place or places specified in the relevant Purchase Order.
- 5.5 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 4.

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5.6 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the place or places specified in the relevant Purchase Order.

5.7 Notwithstanding Condition 9.5 the Supplier may not deliver the Goods by separate instalments or perform the Works in stages unless agreed in writing by the Buyer. Where it is agreed that Goods may be delivered by separate instalments or that Works may be performed in stages:

5.7.1 failure by the Supplier to deliver any one instalment on time or at all or where there is any defect in an instalment; or

5.7.2 failure by the Supplier to complete any stage of the Works on time or at all or where there is any defect in any stage,

shall entitle the Buyer to the remedies set out in Condition 24.

6 QUALITY AND DESCRIPTION AND GENERAL WARRANTIES

6.1 The Supplier warrants and represents to the Buyer that all Goods or Works shall:

6.1.1 conform in all respects with the particulars and requirements contained in the Purchase Order and these Conditions;

6.1.2 correspond with their description;

6.1.3 be of sound design, materials and workmanship;

6.1.4 be equal in all respects to any samples provided by the Supplier and approved by the Buyer;

6.1.5 be of satisfactory quality;

6.1.6 be free from defects;

6.1.7 be capable of the standard of performances specified;

6.1.8 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; and

6.1.9 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health, safety or environment

6.1.10 be provided or performed in accordance with all necessary licences and consents, and comply with all applicable laws and regulations

6.2 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.

6.3 The Supplier will comply with the Kellogg Supplier Code of Conduct as will be provided to the Supplier from time to time.

6.4 Supplier represents and warrants that it will establish and maintain appropriate administrative, technical and physical safeguards consistent with the highest industry standards against the destruction, loss, alteration, unauthorized access to or use of Buyer's data or Supplier's data or systems, and any anticipated threats and hazards to the security and integrity of Buyer's data or Supplier's data or systems (the "Data and System Safeguards"); Supplier will promptly notify Buyer of any suspected or actual breach of the Data and System Safeguards that (a) might reasonably be expected to compromise the ability of Supplier to perform its obligations under this Purchase Order and/or (b) relate to the security and/or integrity of Buyer's data.

7 CHARGES AND PAYMENTS

7.1 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 a duly authorised representative of the Supplier.

7.2 Unless otherwise stated in the Purchase Order the price is inclusive of all cost and expense of the Supplier directly or indirectly incurred in the supply of the Goods and/or the performance of the Works, including but not limited to, packaging material, packing, carriage, insurance and delivery of Goods to the place or places specified in the Purchase Order, value added tax if applicable, and any duties, levies and taxes of whatsoever nature applicable to the supply of the Goods or the performance of the Works. No extra charges shall be effective unless agreed in writing and signed by the Buyer.

7.3 Payments should always be made in the Currency of the Purchase Order unless this Currency is no longer a valid and recognised currency at the time of Payment in which case Payment shall instead be made in GBP or USD (to be agreed between the parties) at the exchange rate of the European Central Bank reference rate fixing on the date of the last Purchase Order between the Parties.

7.4 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.

7.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in the supply of the Goods and/or the performance of the Works, and the Supplier shall allow the Buyer to inspect such records at all reasonable times on request.

7.6 The Buyer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Buyer to the Supplier under the Contract.

8 STAGE PAYMENTS

8.1 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 following the execution of a separate written agreement between the parties and upon satisfaction of the mutually agreed provisions therein.

9 BUYER REMEDIES

9.1 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, at the sole discretion of the Buyer, 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.

9.2 The Delivery Date(s) 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.

9.3 If the Supplier fails to deliver the Goods and/or perform the Works in accordance with the Delivery Date(s), the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights:

9.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

9.3.2 to refuse to accept any subsequent performance of the Works and/or delivery of the Goods which the Supplier attempts to make;

9.3.3 to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;

9.3.4 where the Buyer has paid in advance for Works that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and

9.3.5 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to meet such dates.

9.4 If the Supplier has delivered Goods that do not comply with the undertakings set out in these Conditions, then, without limiting its other rights or remedies, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:

9.4.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

9.4.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;

9.4.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

9.4.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

9.4.5 to recover from the Supplier any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and

9.4.6 to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's failure to supply Goods in accordance with Condition 6.

9.5 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 rights set out in Condition 9.3 in respect thereto.

9.6 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

9.7 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.

10 INDEMNITY

10.1 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:

10.1.1 Goods or Works not being in accordance with the Purchase Order and these Conditions; or

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

10.2 The Supplier shall effect and maintain adequate insurance with a reputable insurance company against all insurable risks which are the subject of the Supplier's indemnity in Condition 10.1. A certificate of insurance from the insurer providing evidence of such insurance must be provided to Buyer at the address above, marked for the attention of the Buyer's legal department. The insurance certificate shall provide that the insurer will give Buyer 30 days prior notice of the cancellation of the insurance. 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 10.1 where the Supplier's insurer, or the terms of the Supplier's insurance, are not satisfactory to the Buyer.

10.3 This Condition 10 shall survive termination of the Contract.

11 INSOLVENCY / FINANCIAL STATUS OF THE SUPPLIER

11.1 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

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against him or being a company goes into liquidation or suffers a receiver or an examiner to be appointed or anything analogous to the foregoing happens in any jurisdiction.

- 11.2 Should a change occur in the credit rating of the Supplier, the Supplier shall notify the Buyer within 30 days from the date that they are notified of this change.

12 COMPLIANCE WITH LAW

- 12.1 In respect of and in connection with the Goods and the performance of the Works (including any employment of any labour used in connection therewith), the Supplier shall ascertain, comply with and observe strictly all European Union legislation and all Acts of the Oireachtas, 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 or regulator. 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 may be necessary shall be taken out by the Supplier at its own expense. If the Supplier discovers that any Materials are at variance with legal requirements, it shall promptly notify the Buyer in writing.

- 12.2 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 European Union legislation, Acts of the Oireachtas, statutory provisions and regulations, directives, common law duties, by-laws, regulations, determinations and codes of practice, as aforesaid.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 In respect of the Goods and any goods that are transferred to the Buyer as part of the Works under the Contract, or created by the Supplier in furtherance of the Contract, the Supplier warrants and represents that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Buyer, it will have full and unrestricted rights to sell and transfer all such items to the Buyer.

- 13.2 The Supplier warrants and represents 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 the Supplier 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.

- 13.3 The Buyer reserves the right to reject Goods or Works for breach of Conditions 13.1 or 13.2 notwithstanding any previous acceptance thereof.

- 13.4 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 13.2 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.

- 13.5 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 Materials prepared or constructed by the Supplier at the request of 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 and represents 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 Materials shall be delivered to the Buyer.

- 13.6 The Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Works (including any Materials prepared or constructed by the Supplier at the request of the Buyer).

- 13.7 The Supplier shall obtain waivers of all moral rights in the products of the Works (including any Materials prepared or constructed by the Supplier at the request of the Buyer) to which any individual is now or may be at any future time entitled under the Copyright and Related Rights Act, 2000 (as amended and supplemented) or any similar provisions of law in any jurisdiction.

- 13.8 The Supplier shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with Condition 13.6.

- 13.9 All Buyer Materials are the exclusive property of the Buyer.

14 CONFIDENTIALITY

- 14.1 In the event Buyer disclosed to Supplier any confidential information, including that which may be disclosed verbally, in writing, or through observation of Buyer's facilities, Supplier will not use such information for its own benefit or disclose Buyer's confidential information to any third parties, except to the extent required by law and then only upon prior written notice to Buyer. No information received by Buyer in connection with negotiating and filling this Purchase Order will be deemed to constitute a trade secret, or to have been given in confidence to Buyer.

- 14.2 Upon termination of this Agreement for whatever reason and at other times when requested to do so by the Buyer, the Supplier shall:

- 14.2.1 deliver up to the Buyer:

- (i) all Buyer Materials, working papers or other material (in whatever format it is stored) and copies provided to it pursuant to this Contract or

prepared by it either in pursuance of this Contract or previously in connection with this Contract;

- (ii) all specifications, programs (including source codes) and other documentation comprised in the Works (including any Materials prepared or constructed by the Supplier at the request of the Buyer) and existing at the date of such termination, whether or not then complete;

- 14.2.2 irretrievably delete any information relating to the Business of the Buyer stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its possession or under his control; and

- 14.2.3 provide a signed statement that it has complied fully with his obligations under this Condition 14.

- 14.3 If the Supplier fails to fulfil its obligations under Condition 14, then the Supplier agrees that the Buyer may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

- 14.4 The Supplier agrees to indemnify, keep fully and effectively indemnified and hold the Buyer harmless from and against any and all loss, damages, proceedings, suits, third party claims, judgements, awards, expenses and costs (including legal costs) incurred by or taken against the Buyer as a result of a breach by the Supplier (or any of its Representatives) of this Condition 14.4.

- 14.5 If the Supplier becomes aware of any breach of confidence by any of its Representatives it shall promptly notify the Buyer and give the Buyer all reasonable assistance in connection with any proceedings which the Buyer may institute against any such person, at the Supplier's cost and expense.

- 14.6 This Condition 14.4 shall survive termination of the Contract.

15 ACCESS TO PREMISES, INSPECTION AND TESTING

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

- 15.2 The Buyer shall have the right at all reasonable times to inspect and test Goods or Works which are 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, the Buyer's right under Condition 9 to accept or reject Goods or Works after completion of delivery or the performance.

16 CONDUCT OF SUPPLIER OF WORKS ON BUYER'S PREMISES

- 16.1 Where the Supplier is performing Works on the Buyer's premises it shall conform in all respects 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 Work

17 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 is to be in such form and to be procured from such company or companies or clearing bank as shall be approved by the Buyer in its discretion. 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 company issuing the bond or the clearing bank directly.

18 LIENS

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

- 18.2 At any time, the Supplier shall, if the Buyer so requests, furnish evidence satisfactory to the Buyer that all accrued rights, liens, invoices, claims, demands and debts relating to Goods supplied or Works performed by any third party in relation to a Purchase Order are fully paid, satisfied and released.

- 18.3 If, during the progress of Works, 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 any demand is made, then the Buyer at its discretion may withhold 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, the Buyer at its discretion may by two days written notice cancel the performance of any unperformed balance of the Works without liability.

19 PREMIUM ITEMS

- 19.1 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 any such 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 such Purchase Order may be

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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 19.

20 HAZARDOUS MATERIALS

- 20.1 The Supplier warrants and represents that all Goods supplied to and Works performed for the Buyer shall be fit for purpose and in compliance with Kellogg Health and Safety standards and all relevant local regulations and legislation.
- 20.2 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 fails to comply with the provisions of Condition 20.1.
- 20.3 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 20 by the Supplier.
- 20.4 The Supplier is reminded of its obligations under these terms, and shall effect insurance against all those risks the subject of its indemnities with insurers and on terms satisfactory to the Buyer. Satisfactory evidence of such insurance and payment of the current premiums shall be shown to the Buyer within 10 Business Days of payment of premium or 10 Business Days of the date of the Purchase Order whichever is the earlier.

21 ASSIGNMENT

- 21.1 This Agreement is personal to the Supplier and the Supplier shall, not without the prior written consent of the Buyer, assign, mortgage, charge (or cause to be encumbered by a lien or otherwise) or otherwise dispose of any of its rights under or sub-contract 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.
- 21.2 The Buyer may assign any of its rights or obligations under the Contract to any of its Associated Companies.

22 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 end 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 22.

23 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 a 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.

24 TERMINATION

- 24.1 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 24.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- 24.1.2 the Supplier ceases or threatens to cease carrying on the whole or a substantial part of its business or stops or suspends payment of its debts or is unable to pay its debts within the meaning of Section 214 of the Companies Act 1963 or is the subject of any analogous proceedings in any other jurisdiction;
- 24.1.3 the Supplier commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies, or the solvent reconstruction of the Supplier;
- 24.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 24.1.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 24.1.6 an encumbrancer of the Supplier takes possession, a person becomes entitled to appoint a receiver or a receiver is appointed, over any of the property or assets of the Supplier;
- 24.1.7 the Supplier becomes subject to an order for the appointment of an examiner or makes any voluntary arrangement with its creditors (within the meaning of the Companies Acts 1963 to 2010);
- 24.1.8 a majority of the voting or management control of the Supplier is acquired, or the assets of the Supplier are acquired by any person or group of persons acting in concert which acquisition makes the continuation of this Agreement unacceptable to Buyer, provided that such notice is given in writing within 30 days of the Supplier writing to the Buyer with notice of such an event having taken place;

- 24.1.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 24;
- 24.1.10 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 24.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract:
- 24.2.1 in respect of the performance of Works, by giving the Supplier 4 weeks' written notice; and
- 24.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Buyer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 24.3 In any of the circumstances in these Conditions in which the Buyer may terminate the Contract, where both Goods and Services are supplied, the Buyer may instead terminate part of the Contract in respect of the Goods, or in respect of the Works, and the Contract shall continue in respect of the remaining supply.

- 28.3 The Supplier may terminate the Contract by giving the Buyer 9 months' written notice.

25 CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- 25.1 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 25.2 Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

26 SURVIVAL OF OBLIGATIONS ON TERMINATION

On termination of this Contract (however arising) the accrued rights and liabilities of the parties as at termination, and the following Conditions shall survive and continue in full force and effect:

- 26.1 Condition 10 (Indemnity);
- 26.2 Condition 13 (Intellectual Property Rights);
- 26.3 Condition 14 (Confidentiality);
- 26.4 Condition 24 (Termination);
- 26.5 Condition 26 (Survival of Obligations);
- 26.6 Condition 27 (Notices); and
- 26.7 Condition 31 (Governing Law).

27 NOTICES

- 27.1 Any notice or consent required or authorised to be given under these Conditions may be served:
- 27.1.1 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
- 27.1.2 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).

- 27.2 Each person giving a notice or making a communication hereunder by facsimile shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or the time upon which it is deemed to have been served.

28 GENERAL

- 28.1 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.
- 28.2 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.
- 28.3 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 28.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 28.5 A waiver of any right under the Contract is only effective if it is in writing. 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. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 28.6 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.
- 28.7 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.

28.8 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.

29 ENTIRE AGREEMENT

The Contract and any Purchase Order between the Parties contain all the terms which the parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such subject matter. Any change to or replacement of any of the terms the Contract will only be binding if agreed in writing between the Parties. Neither party to the Contract has been induced to enter into the Contract by a statement or promise which it does not contain, save that this clause shall not exclude any liability which one party would otherwise have to the other party in respect of any statement made fraudulently by that party.

30 FORCE MAJEURE

In the event either party, through no fault of its own, is unable to perform hereunder due to a Force Majeure event, such non-performance will be excused, provided that if any such event continues for more than 15 days, the Buyer may, at its option, cancel the Purchase Order and all of its related obligations. Each party will promptly notify the other of any inability to perform and the cause of such non-performance.

31 GOVERNING LAW AND JURISDICTION

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Republic of Ireland and the parties hereby submit to the exclusive jurisdiction of the Irish courts to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).