

KESTREL FOODS LIMITED – TERMS AND CONDITIONS

GENERAL SCOPE

These Terms and Conditions (as amended from time to time in accordance with clause 15.2 ("the Conditions")) will apply to all Purchase Orders (defined below) for the Products (defined below) from you ("the Buyer") to us, Kestrel Foods Limited, a company incorporated in Northern Ireland with company number NI031111 and registered office address at Unit 8 Carn Drive, Carn Industrial Estate, Portadown, County Armagh, BT63 5WJ (hereinafter referred to as "the Seller") (each a Party and together "the Parties").

The Purchase Orders, these Conditions and the Incoterms 2010 shall be applicable to all orders now and in the future for products from the Buyer to the Seller and shall form the contract between the Parties for the sale and purchase of the Products ("the Contract").

In the event of any conflict between the Purchase Orders, these Conditions and the Incoterms 2010, will be effective in the following order of priority:

1. These Conditions;
2. Incoterms 2010 (as amended, extended or re-enacted from time to time);
3. The Purchase Order.

1 BASIS OF CONTRACT

- 1.1 The Buyer orders products from the Seller by submission of a purchase order (the "**Purchase Order**") to the Seller detailing the products the Buyer wishes to purchase (the "**Products**").
- 1.2 On placement of a Purchase Order to the Seller the Buyer acknowledges and accepts these Conditions, which will apply to any subsequent Purchase Orders placed by the Buyer, to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Submission of a Purchase Order to the Seller constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Purchase Order and any other applicable details are complete and accurate and that the Purchase Order includes the Purchase

Order number, product code, product quantity, delivery address (in as much detail as possible including postcode) and the Buyer's requested delivery date.

- 1.4 Any Purchase Order placed by the Buyer is strictly subject to acceptance by the Seller in accordance with clause 1.5.
 - 1.5 Purchase Orders may be placed with the Seller via telephone, email or EDI. Each Purchase Order shall be deemed to be a separate offer by the Buyer to purchase Products on these Conditions, which the Seller shall be free to accept or decline at its absolute discretion. No Purchase Order shall be deemed to be accepted by the Seller until the Seller sends the Buyer a delivery notification which shall be on the date the Products are delivered to the Buyer in accordance with clause 7.1. The Contract for the sale and purchase of the Product will be formed when the delivery notification is sent to the Buyer in accordance with this clause 1.5.
 - 1.6 The Buyer acknowledges that the products sold by the Seller are subject to availability in the territory to which the Buyer is ordering them, and such products may not be available in particular territories. The Seller shall indicate to the Buyer as soon as reasonably practicable following receipt of a Purchase Order from the Buyer if any Products which the Buyer has ordered are not available for delivery in the Buyer's territory, and the Purchase Order shall be deemed to be amended accordingly.
 - 1.7 The Seller shall package and label the Products in accordance with normal industry standards.
- ## 2 INCOTERMS
- 2.1 Incoterms 2010 (as amended, extended or re-enacted from time to time) will be applicable to all Products ordered by the Buyer.
- ## 3 FOLLOW ON ORDERS
- 3.1 Products ordered by the Buyer which are not in stock at the time of dispatch to the Buyer will be notified to the Buyer and held on file by the Seller. The out of stock Products shall be delivered to the Buyer when such out of stock Products come back into stock, unless the Buyer indicates to the Seller (email address provided during the Buyer set up process) that it does not require any follow-on orders, in which case the Purchase Order in so far as it relates to such out

of stock Products shall be deemed cancelled by the Buyer.

4 **CONDITIONS APPLICABLE**

4.1 The sale of any products by the Seller to the Buyer shall be governed solely, in and for as long as obligations subsist under or in connection with these Conditions, by the express provisions of these Conditions and the Incoterms 2010.

4.2 Subject to clause 15.2:

4.2.1 no provision other than a provision that is expressly set out in these Conditions shall become a term of the Contract; and

4.2.2 no provision that is not expressly set out in these Conditions shall in any manner govern or affect the Contract or any obligation arising under or in connection with the Contract.

4.3 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions or the Incoterms 2010.

5 **DESCRIPTION**

5.1 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the products referred to in them. They shall not form part of the Contract nor have any contractual force.

5.2 When a sample of the Products has been shown to or inspected by the Buyer, this does not constitute a sale by sample.

6 **LEGISLATION AND DUTY**

6.1 The Buyer is responsible for complying with any legislation or regulations governing the importation of Products into the country of destination and will be solely liable for the payment of any duties on the Products. The Buyer agrees to fully indemnify the Seller in this regard.

7 **DELIVERY**

7.1 The Seller shall deliver the Products to the location set out in the Purchase Order or such other location as the Parties may agree ("**Delivery Location**").

7.2 The Buyer acknowledges that any dates quoted for delivery are deemed to be approximate only, and the time of delivery is not of the essence.

7.3 If the Seller fails to deliver the Products its liability shall be limited to the cost of the Products.

7.4 The Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event (defined below) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

7.5 In the event that the Seller anticipates that it may not be able to deliver the Products within 5 days of the delivery date requested by the Buyer in accordance with clause 1.3, it shall indicate to the Buyer as soon as reasonably practicable following receipt of a Purchase Order, the earliest possible delivery date for the Products.

7.6 The cost of delivery shall be included in the Price (as defined in clause 10.1), unless otherwise agreed between the Parties.

7.7 The cost of delivery shall be subject to the method of delivery (which shall be at the Seller's discretion), and shall be payable in accordance with clause 10.3.2.

7.8 Delivery of the Products is completed on the completion of unloading of the Products at the Delivery Location.

7.9 Acceptance of the delivery of the Products shall occur and be deemed to occur immediately on the entry or inscription of a signature at the Delivery Location on the Seller's standard delivery note, which entry or inscription shall immediately constitute, and be deemed to constitute, conclusive evidence of the Buyer's satisfaction with and acceptance of the Products as being in accordance with the warranties at clause 9.1.

8 **TITLE AND RISK**

8.1 The risk in the Products shall pass to the Buyer on completion of Delivery in accordance with clause 7.8.

8.2 Title to the Products shall not pass to the Buyer until the earlier of:

where the Products are stored in order to recover them.

8.2.1 the Seller receives payment in full (in cash or cleared funds) for the Products in accordance with clause 10; and

8.2.2 the Buyer resells the Products, in which case title to the Products shall pass to the Buyer at the time specified in Clause 8.4.

8.3 Until title to the Products has passed to the Buyer, the Buyer shall keep the Products in satisfactory condition.

8.4 Subject to Clause 8.4.1, the Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products. However, if the Buyer resells the Products before that time:

8.4.1 it does so as principal and not as the Seller's agent;

8.4.2 it will ensure that the entire proceeds of the sale or any monies derived from the Products (or any part of the Products) including insurance proceeds are held in trust for the Seller; and

8.4.3 title to the Products shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

8.5 If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in Clause 12.1.2 to 12.1.4 (inclusive), then, without limiting any other right or remedy the Seller may have:

8.5.1 the Buyer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and

8.5.2 the Seller may at any time:
(a) require the Buyer to deliver up all Products in its possession that have not been resold; and;
(b) If the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party

9 QUALITY AND DEFECTS

9.1 The Seller warrants that on delivery of the Products at the Delivery Location, the Products shall:

9.1.1 conform in all material respects with their descriptions as set out in the specifications for the Products (**Specification**) which are available on request by the Buyer from the Seller's technical team by emailing technical@forestfeast.com and

9.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

9.1.3 comply with all applicable statutory and regulatory requirements.

9.2 Subject to clause 9.3, the Seller may, at the Seller's exclusive and unqualified discretion, make good either by replacement or refund (in the event that the Buyer has already paid the Price for the Products), any alleged defect in the Products which is not in compliance with the warranty at clause 9.1 which is notified to the Seller by the Buyer within a period of 48 hours after the Products have been delivered to the Delivery Location, provided that:

9.2.1 the Buyer notifies the Seller in writing of the claimed defect(s) immediately on becoming aware of them; and;

9.2.2 the Seller is satisfied that the sole cause of the defect(s) is due to its negligence or fault; and

9.2.3 all Products claimed to be defective are returned to the Seller at the expense of the Buyer within the period stipulated by the Seller, following the Seller's receipt of notice in accordance with clause 9.2.1, and following the Buyer's receipt of a RETURNS AUTHORISATION form issued by the Seller. No Products may be returned until a RETURNS AUTHORISATION has been issued by the Seller. Products must then be returned within 7 days of the Buyer's receipt of a Returns Authorisation from the Seller. The Buyer's carriage

costs/charges are not refundable and the Buyer must ensure that they use a suitably packed/insured/traceable carriage method.

9.3 The Seller shall not be liable for the Products' failure to comply with the warranty set out in Clause 9.1 in any of the following events:

9.3.1 the Buyer makes any further use of such Products after giving notice in accordance with Clause 9.2;

9.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use and maintenance of the Products or (if there are none) good trade practice regarding the same;

9.3.3 the Buyer alters or tampers with the Products;

9.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage conditions; or

9.3.5 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.4 Any Products allegedly damaged in transit or delivery shortages must be notified to the Seller within 48 hours of delivery at the Delivery Location and adequate evidence (including photographic evidence) provided to the Seller of the alleged damage. If requested, the Buyer shall return the Products to the Seller at the Buyer's cost. The Buyer must keep all packaging which may be required. Clause 9.2 applies to the return of such Products to the Seller.

9.5 Replacement Products provided in accordance with clause 9.2 shall:

9.5.1 be delivered to the Buyer at the Delivery Location; and

9.5.2 be subject in all other respects (*mutatis mutandis*) to the provisions of these Conditions and the Incoterms 2010.

9.6 Except as provided in this Clause 9, and save for where such liability cannot be lawfully limited or

excluded, the Seller shall have no liability to the Buyer in respect of the Products' failure to comply with the warranty set out in Clause 9.1. For the avoidance of doubt the Buyer shall be responsible for ensuring that the Specification for the Products meets its requirements prior to placing a Purchase Order for the Products, and the Seller shall have no liability to the Buyer in respect of the Products' failure to comply with any specific requirements of the Buyer, even if such requirements are notified to the Seller or could be reasonably contemplated by the Seller.

9.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.8 The redress afforded by this clause 9 is without prejudice to the other provisions of these Conditions and the Incoterms 2010.

10 PRICING AND PAYMENT

10.1 Prices in the Seller's marketing material and brochures are indicative only, and subject to change. The correct price for the Products shall be the price as stated on the invoice provided by the Seller at the date of delivery (**the "Price"**).

10.2 The Seller may, by giving notice to the Buyer at any time up to 5 Business Days before delivery at the Delivery Location, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

10.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

10.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Products ordered; or;

10.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

10.3 The Price(s) of the Products:

10.3.1 excludes amounts in respect of value added tax (VAT) and any other applicable taxes, levies or duties which shall be charged in addition at

the rate in force at the date of the invoice and added to the invoice total; and

10.3.2 includes the costs and charges of transport of the Products, unless notified to the Buyer in which case these shall be invoiced to the Buyer at the same time as the invoice for the Products in accordance with clause 10.5.

10.4 The Buyer shall be responsible for charging VAT to end customers on the Products, and the Seller shall have no liability whatsoever for any non-payment of VAT by the Buyer or any decision by HMRC that VAT should be charged on a Product that had previously been indicated as non VAT-able.

10.5 The Seller will generally invoice the Buyer for the Products on delivery at the Delivery Location. However the Seller reserves the right to issue its invoice at a different point. Payment of the invoice shall be made in cash or cheque immediately on delivery unless the Seller stipulates that payment is required in full prior to dispatch.

10.6 If a credit facility is offered to the Buyer in accordance with clause 10.11 and 10.12 (subject to satisfactory credit insurance confirmation) payment must be received as cleared funds with the Seller within 30 days of Invoice unless otherwise agreed in writing.

10.7 The Buyer must notify the Seller within 2 business days of receipt of an invoice, if it believes that the invoice amount is incorrect, and the Buyer and the Seller shall enter into discussions to agree the invoice amount within 14 days of such notification. In the event that the invoice amount cannot be agreed between the Parties within 14 days, the amount originally on the invoice shall be deemed to prevail. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 10.5.

10.8 Re-presented cheques are charged at £10 per each re-presentation.

10.9 If payment is not received by the due date, the Seller at its exclusive discretion shall be entitled:

10.9.1 to charge interest on the outstanding amount at the rate of 3% per annum above the base lending rate of Bank

of Ireland compounded, accruing daily from the Invoice date until payment of the overdue amount is received in full whether before or after judgment. The Buyer shall pay the interest together with the overdue amount or alternatively, at the Seller's discretion, the Seller may charge statutory interest and compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (or any statutory amendment of same); and/or

10.9.2 to require that the Buyer make a payment in advance of any delivery of Products not yet made; and/or

10.9.3 not to make any delivery of Products;

10.9.4 to recover from the Buyer all costs, charges and expenses incurred by the Seller in recovering any debt or overdue payments owed by the Buyer.

10.10 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

10.11 The Seller may, in its absolute discretion, allow the Buyer a credit facility. If a Buyer is over its set credit limit the Seller reserves the right to withhold any Products due to be delivered to the Buyer and require payment prior to delivery of the Products.

10.12 The Seller reserves the right to liaise with credit reference and other agencies with regard to the Buyer's status and submit information accordingly and in line with relevant legislation. The Seller reserves the right to withdraw a credit facility at any time on 14 days' notice to the Buyer at its discretion.

11 INDEMNITY

11.1 If any claim is made against the Seller arising out of or in connection with the Buyer's failure to charge VAT on the Products, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential

losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with the claim.

12 TERMINATION

12.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:

12.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

12.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

12.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clause 12.1.2 to 12.1.4 or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

12.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

12.5 Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13 LIMITATION OF LIABILITY

13.1 Nothing in the Contract shall limit or exclude the Seller's liability for:

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

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

13.1.4 defective products under the Consumer Protection Act 1987

13.1.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability

13.2 Subject to clause 13.1:

13.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.2 the Seller's total liability to the Buyer in respect of all other losses arising

under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 120% of the price of the Products ordered by the Buyer for one specific order in accordance with the Contract.

obligations under the Contract without the prior written consent of the Seller

14 **FORCE MAJEURE**

14.1.1 Neither Party shall owe or incur any liability under or in connection with, or be deemed to be in breach of, the Contract by reason of any delays in, revisions to, or failures in performance of the Contract that result from circumstances beyond the reasonable control of that Party.

14.1.2 The Party affected by the circumstances referred to in clause 14.1.1 shall promptly notify the other Party in writing:

(a) when the occurrence of any circumstance referred to in clause 14.1.1 causes, or can reasonably be expected to cause or to threaten to cause, a delay, revision or failure in performance; and

(b) when any such circumstance ceases to do so.

14.1.3 If such circumstances continue for a continuous period of more than 6 months, either Party may terminate the Contract by written notice to the other Party.

15 **GENERAL**

15.1 **Assignment and other dealings**

(a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or

15.2 **Variation**

The Contract may be amended only by formal amendment in writing signed by duly authorised representatives of the Parties.

15.3 **Waiver**

No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

15.4 **Entire agreement**

(a) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter

(b) Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

15.5 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause

shall not affect the validity and enforceability of the rest of the Contract.

15.6 Notices

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email. The Seller's email address for notice is:

enquiries@forestfeast.com

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.6(a) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one business day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

15.7 Third party rights

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

15.8 Governing law

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or

formation, shall be governed by and construed in accordance with the law of Northern Ireland.

15.9 Jurisdiction

Each Party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.