

# **DAIRY SOLUTIONS LIMITED**

**("the Buyer")**

## **1. Definitions Terms and Conditions of Purchase**

1.1 In relation to the terms and conditions set out below ("these Conditions") the following words shall have the following meanings:

- Buyer:** Dairy Solutions Limited is a company incorporated in England and Wales (registered number:04514636) whose registered office and principal place of business is at Englesea House, Barthomley Road, Crewe, Cheshire, CW1 5UF or such other company which is:
- (a) its holding company or subsidiary (within the meaning of S.1159 of the Companies Act 2006); or
  - (b) the subsidiary of any such holding company; or
  - (c) its associated company (within the meaning of s449 of the Corporation Tax Act 2010) as may enter into a Contract with the Supplier;
- Buyer Materials** has the meaning given in clause 14.3;
- Contract:** a contract between the Buyer and the Supplier for the supply of Goods to the Buyer by the Supplier in accordance with these Conditions;
- Call Off Order:** An order for a specific number of Goods at a specific time, for delivery to a nominated warehouse as placed by the Buyer from time to time with a Supplier pursuant to a Contract;
- Delivery Location:** has the meaning set out in clause 6.3.1;
- Goods:** means the goods that the Supplier supplies pursuant to a Contract;
- Intellectual Property Rights:** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or getup, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions, of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- Order;** An order placed with a Supplier by the Buyer for the supply of Goods (including Call Off Orders) and set out in the Buyer's purchase order form or the Buyer's written acceptance of the Supplier's quotation, as the case may be;
- Quality Control Procedures:** The Buyer's quality control procedures, details of which shall be advised to the Supplier from time to time;
- Quotation:** Any quotation from a Supplier to the Buyer for the supply of Goods to the Buyer;
- Specification:** A specification or description of any Goods supplied or to be supplied by the Buyer (whether contained in a Contract or an Order or otherwise) specified by the Buyer from time to time (and **Specifications** shall be construed accordingly);

**Supplier:** the person firm company or other entity with whom the Buyer enters into a Contract or negotiates a contract to purchase goods whether or not concluded.

## **2. Basis of Contract**

- 2.1 These Conditions shall be deemed to be incorporated in every request from the Buyer to the Supplier for a Quotation, every Order and every Contract relating to Goods unless otherwise expressly agreed by the Parties. Every Quotation to supply Goods and every acceptance of an Order for Goods by the Supplier constitutes unconditional acceptance of these Conditions. These Conditions shall prevail over, supersede and exclude any inconsistent terms or conditions contained in, referred to or otherwise implied by the Supplier's Quotation, acceptance of an Order, correspondence, or implied by trade, custom, practice or course of dealing. No addition to or variation of or exclusion of these Conditions or any of them shall be binding upon the Buyer, unless confirmed expressly and specifically by the Buyer, in writing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted and the Contract shall come into existence on the earlier of:
- 2.3.1 the Supplier issuing a written acceptance of the Order; or
- 2.3.2 the Supplier doing any act consistent with fulfilling the Order.
- 2.4 The Supplier agrees to comply with all requirements of the Buyer in respect of delivery, warehousing, invoicing, quality control, return of returnable packaging or delivery materials, bar coding and other such requirements (including any amendments thereto) as are notified in writing to the Supplier from time to time and these requirements will form part of each Contract.

## **3. Alteration of Specifications**

- 3.1 No alteration to any Specification shall be of any effect unless made by the Buyer in writing.
- 3.2 The Buyer reserves the right to make alterations from time to time to any Specification upon giving reasonable notice to the Supplier and the price for the Goods which are supplied subject to any new Specification shall be increased or decreased by such amount as shall be reasonable to reflect such alteration and shall be agreed by the parties.

## **4. Quality Control**

- 4.1 All relevant Quality Control Procedures issued by the Buyer shall form part of these Conditions. If either the initial Quality Control Procedures are not completed to the Buyer's satisfaction, or at any time thereafter ongoing Quality Control Procedures are not complied with to the Buyer's satisfaction then the Buyer may terminate the whole or any unfulfilled part of any applicable Contract at any time without further liability to the Supplier other than to pay for any Goods which the Buyer has received and which it does not reject pursuant to any provision of these Conditions.

- 4.2 The Supplier shall arrange for representatives of the Buyer to be given access at all reasonable times to the Supplier's premises and any premises where Goods, or any materials from which Goods are manufactured, are manufactured, processed, packaged, stored or collated for the purposes of inspecting and examining materials used in, and the process of manufacture, processing, packaging, storage and collation or, inspect and examine any Goods being supplied or to be supplied to the Buyer. If following such inspection or testing the Buyer considers that the Goods do not conform to or are unlikely to conform to the Supplier's warranties in clause 5, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Any such inspection or examination shall not absolve the Supplier from responsibility or liability under these Conditions nor imply acceptance of the Goods by the Buyer. The Buyer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions and to take any such further action as is available to it pursuant to these Conditions.
- 4.3 The cost of any testing or product evaluations of any Goods deemed by the Buyer to be necessary or remedial actions taken by the Supplier shall be borne by the Supplier.

## **5. Warranties**

- 5.1 The Supplier warrants to the Buyer that all Goods supplied by the Supplier to the Buyer will:
- 5.1.1 be of the nature, quantity, substance and quality described in, and will comply in every respect with the provisions of, the Contract pursuant to which they are supplied (including the Specification);
  - 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment;
  - 5.1.3 comply in every respect with the provisions of existing legislation and statutes of either United Kingdom or EU origin and all Regulations, Statutory Instruments, Directives, orders, Decisions or any other requirements made thereunder including those which relate to or control the nature, substance, quantity, quality, fitness for purpose, manufacture, packaging, packing, labelling, sale, offering for sale, use, marking, constitution, importation, exportation, transportation, storage, possession, dealing, make-up or trade description of such Goods ("Relevant Legislation");
  - 5.1.4 be free from defects in design, materials and workmanship, free from any adulteration and not containing any foreign matter;
  - 5.1.5 not be the subject of any charge or adverse title;
  - 5.1.6 not infringe any third party's Intellectual Property Rights;
  - 5.1.7 be:
    - 5.1.7.1 correctly marked (whether on the Goods themselves, or their labelling or packaging) as to the country of manufacture;
    - 5.1.7.2 correctly declared as to their origin on importation into the EEA;
    - 5.1.7.3 not imported in excess of any quota or other prohibition or restriction; and
    - 5.1.7.4 either: (i) not subject to any chargeable excise duty; or (ii) provided with appropriate documentation where excise duties are chargeable; and

5.1.8 have not been repackaged, rebranded, defaced or otherwise tampered with since being first placed on the market in any way.

**5.2** The Supplier warrants to the Buyer in respect of all Orders and Contracts under which Goods are supplied for delivery in the United Kingdom from a territory outside the United Kingdom that it shall:

5.2.1 obtain any necessary licenses for the exportation, transportation and importation into the United Kingdom of the Goods;

5.2.2 satisfy itself that such licenses have been properly obtained and comply with existing legislation; and

5.2.3 shall ensure that these licenses are delivered to the Buyer where required by the Buyer to enable import clearance without demurrage.

## **6. Delivery Date**

6.1 Where a date for delivery of Goods is specified in a Contract and/or where the Buyer is entitled to, and does, notify the Supplier from time to time of a delivery date, such date must be adhered to strictly by the Supplier and time shall be of the essence. Failure to deliver Goods on the date so specified or notified shall, without prejudice to any other rights or remedies of the Buyer, entitle the Buyer to the remedies set out in clause 7.3.

6.2 Unless stated to the contrary in a Contract the Buyer shall not be obliged to accept delivery by instalments. If, however, in its discretion the Buyer does specify or agree to accept delivery by instalments, delivery of any one instalment later than the date so specified or agreed shall, without prejudice to any other rights or remedies of the Buyer, entitle the Buyer to the remedies set out in clause 7.3.

6.3 In relation to all Contracts under which Goods are supplied for delivery in the United Kingdom and unless agreed in writing by the Buyer to the contrary:

6.3.1 the Goods shall be delivered, carriage and duty paid to the address for delivery, as set out in the Order or instructed by the Buyer prior to delivery (**Delivery Location**);

6.3.2 the Supplier shall insure the Goods for an amount as specified by the Buyer (or, in the absence of such specification, an amount equal to 125% of the Contract price for the Goods plus any duty payable thereon) with a reputable United Kingdom insurance company against all risks including but not limited to theft, pilferage and non-delivery for any reason from the point of production to final destination in the United Kingdom via sea, air, road, rail or any other method of transport;

6.3.3 payment shall be in GB pounds Sterling; and

6.3.4 all Goods shall be accompanied by a delivery note in such form and containing such details as the Buyer shall notify to the Supplier from time to time.

- 6.4 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 6.5 If the Supplier delivers less than 95% of the quantity of Goods ordered, the Buyer may reject the Goods. If the Supplier delivers more than 105% of the quantity of Goods ordered, the Buyer may at its discretion reject the Goods or the excess Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a Pro rata adjustment shall be made to the price payable for the Goods, subject to clauses 7.3.

6.6 The Supplier shall ensure that;

- 6.6.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 6.6.2 each delivery of the Goods is accompanied by a receipt note in the form notified by the Buyer to the Supplier from time to time (including any amended form) which is issued by the Buyer's branch or warehouse, which shall be the only proof of delivery of any Goods that will be accepted by the Buyer and the Buyer shall not be liable to pay for Goods unless and until the prescribed receipt note for them is produced to it.

## **7. Acceptance of Goods and Remedies**

- 7.1 The issue by the Buyer of a receipt note for any Goods shall not constitute any acknowledgement of the condition or nature of those Goods nor the compliance by the Supplier with these Conditions.
- 7.2 The Supplier acknowledges that the Goods supplied by it are purchased by the Buyer for further sale and that the Buyer's procedures prevent examination of all Goods until after they are sold and that some defects may not be discovered by the Buyer until its customer draws them to its attention.
- 7.3 If the Goods are not delivered on the date they are due or, it is discovered within a reasonable period after delivery (taking into consideration clause 7.2) that the Goods or part of them do not comply with the Contract or any Specification or are in breach of the Supplier's warranties set out in clause 5, then, notwithstanding clause 10.2 below and without limiting any of its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
- 7.3.1 to terminate the Contract;
- 7.3.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 7.3.3 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);
- 7.3.4 to refuse to accept any subsequent delivery of the Goods (or other goods) which the Supplier attempts to make;
- 7.3.5 to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods from a third party; and/or
- 7.3.6 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 7.4 Any descriptions given by the Supplier in relation to any Goods supplied shall be deemed to be representations made by the Supplier and, where any such description is found to be materially wrong, the Buyer shall be entitled to the remedies described in clause 7.3.1 and 7.3.2.

- 7.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7.6 The Buyer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **8. Title and Risk**

- 8.1 Title to and risk in any Goods delivered to the Buyer pursuant to a Contract shall pass to the Buyer upon completion of delivery to the Buyer notwithstanding any purported retention of title by the Supplier until some later date or attempt by the Supplier to transfer risk at an earlier date.
- 8.2 The Buyer shall take title but shall not accept risk in any Goods delivered in excess of the quantity ordered save that in respect of any such over-delivered Goods the Buyer shall be entitled to display them for sale and to sell them without first giving notice to the Supplier.
- 8.3 If the Buyer sells any Goods pursuant to clause 8.2, the Buyer shall pay the Supplier for them as if they had been delivered pursuant to the Contract to which they were surplus provided always that the Buyer shall be entitled to retain from that payment the cost of the sale, storage and other charges and any other monies due from the Supplier.
- 8.4 If the Buyer fails or elects not to sell any such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them or any of them within seven days of receipt: by the Supplier of such written notice and to refund to the Buyer any and all reasonable expenses directly or indirectly incurred by the Buyer as a result of their delivery including but not limited to the cost of moving and storing them failing which the Buyer shall be entitled to dispose of such Goods whether in accordance with 8.2 or 8.3 or otherwise and the Buyer shall be entitled to deduct from any future payments due from the Buyer to the Supplier the amount of any reasonable expenses referred to above together with the amount of any reasonable expenses incurred in connection with the disposal of those Goods.

## **9. Contamination**

- 9.1 In the event that any goods supplied by the Supplier (whether or not such goods have been supplied to the Buyer or to a third party) are discovered to have been contaminated whether deliberately or accidentally prior to delivery by the Supplier, the Buyer shall be entitled, without further liability to the Supplier:
- 9.1.1 to suspend delivery of; and/or
  - 9.1.2 to terminate any Contract for; and/or
  - 9.1.3 to require the Supplier to collect at its own risk and expense

any stocks already held by the Buyer of any goods so contaminated and/or any goods of the same description as those so contaminated and/or any other goods supplied by the Supplier the re-sale of which the Buyer, in its absolute discretion, considers is or will be commercially inadvisable as a result of the contamination and the Buyer shall be released from any obligation which has already arisen to pay for, and shall be entitled to a full refund of any sums already remitted in payment for, any such goods.

- 9.2 For the purpose of clause 9.1, Goods will be deemed to be contaminated where they contain any substance or possess any quality or attribute which, in the Buyer's opinion, is actually or potentially harmful to consumers or renders re-sale of the Goods commercially inadvisable or where a claim by any person that the Goods have been interfered with becomes public knowledge.

## **10. Returned Goods**

- 10.1 Whenever and for what reason Goods are returned by the Buyer to the Supplier or are collected by the Supplier on the instructions of the Buyer, the Buyer will issue an official return to supplier note in the form (including any amended form) notified to the Supplier from time to time. The Supplier's or carrier's signature or that of its agent or employee or sub-contractor on such documents or on the Supplier's uplift note shall constitute acceptance of the details set out within the document unless a counter notice rejecting those details is served on the Buyer

within three (3) working days of the date of the document.

- 10.2 Except where otherwise agreed in writing, where any Goods in which the Buyer has already taken title are returned by the Buyer to the Supplier in accordance with these Conditions, title in those Goods shall not pass to the Supplier and shall remain in the Buyer until the Supplier has paid to the Buyer all sums due under the Contract pursuant to which they were supplied. Until such time as title shall pass to the Supplier, the Supplier shall at its expense keep the Goods separate and apart from other Goods, properly stored, protected and insured and in such a way as to identify them clearly as belonging to the Buyer and shall take all steps necessary to ensure that it neither becomes nor is deemed to be the reputed owner of the Goods and the Supplier shall not sell or dispose of the Goods to any third party without prior agreement in writing by the Buyer. If the Supplier sells the Goods or if the Goods are destroyed, damaged or lost it shall hold the proceeds (whether tangible or intangible) of any such sale or disposal and any insurance proceeds in respect of such destruction, damage or loss as a fiduciary agent and bailee for and to the account of the Buyer and to transfer to the Buyer any such rights or claims against third parties to the extent necessary to discharge in full the Supplier's indebtedness to the Buyer. The Supplier shall keep all tangible proceeds properly stored, protected and insured. If at any time payment of sums due to the Buyer in respect of the Goods is overdue, the Buyer may by its servants or agents enter upon the Supplier's premises and recover and dispose of the Goods and the Supplier shall make no claim against the Buyer in respect of such entry or disposal save to recover any balance due to the Supplier.

## 11. **Price and payment**

- 11.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 11.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Buyer.
- 11.3 The Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 11.4 The Supplier may invoice the Buyer for the Goods on or at any time after the completion of delivery.
- 11.5 The Buyer shall pay correctly rendered invoices within twenty-eight (28) days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

## 12. **Indemnity**

- 12.1 Subject to clause 12.2 below the Supplier accepts full responsibility for, and shall indemnify and hold the Buyer harmless against all costs, expenses, damages, injuries and losses (whether direct or indirect) including, without limitation, any interest, economic loss, loss of profit, revenue or goodwill, costs (including management, professional and legal fees and costs), and penalties whatsoever awarded against or incurred or paid by the Buyer resulting or arising directly or indirectly from or in connection with:
- 12.1.1 a breach by the Supplier of any of these Conditions or any other terms of a Contract;
- 12.1.2 any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 12.1.3 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

12.1.4 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 12.1 shall survive termination of the Contract.

- 12.2 The Supplier shall not be liable to indemnify the Buyer in accordance with 12.1 above if and to the extent that the loss suffered or incurred by the Buyer results from the Buyer's own willful or negligent act or omission.
- 12.3 For the avoidance of doubt nothing in these Conditions shall seek to limit either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or any other liability which cannot be limited by applicable law.

### 13. **Insurance**

- 13.1 The Supplier shall for so long as it is party to a Contract with the Buyer hold and maintain in force at all times and for a period of ten years thereafter, with a reputable insurance company, product liability insurance and public liability insurance, with an indemnity limit of £5,000,000 or such sum as the Buyer may from time to time reasonably require in respect of injury or damage to persons or property arising out of the manufacture or sale of Goods supplied by the Supplier to the Buyer and the Buyer shall be entitled to inspect such policy at any time on reasonable notice and shall be supplied with the current premium receipt from time to time if requested.
- 13.2 If at any time the Supplier fails to pay any premium which it is obliged to pay pursuant to clause 13.1, the Buyer shall be entitled to pay any such premium itself on the Supplier's behalf and to deduct an amount equal to any sum so paid by way of set off against any sums owed by the Buyer to the Supplier or, if none, to recover such amount as a debt from the Supplier.

### 14. **Buyer's Property**

- 14.1 The Supplier shall be responsible for any property of the Buyer which may be issued to the Supplier in connection with any Contract and, in the event of any loss of, or damage to, it, whilst in the Supplier's possession, whether or not caused by the negligence or fault of the Supplier, its servants or agents, the Supplier will be liable to the Buyer for the full new replacement value of the property or the value of the items in question, whichever is the higher, unless the damage is reasonably repairable in which case it shall be liable for costs of, and ancillary to, the repair. Prior to invoking this clause against the Supplier, the Buyer shall use reasonable endeavours to obtain full compensation from its insurers under the terms of its insurance cover from time to time in place.
- 14.2 The Supplier as beneficial owner hereby assigns to the Buyer all Intellectual Property Rights in any artwork which has been created (and by way of present assignment of future copyright in any artwork which will be created) for use on or in relation to any "own-label" Goods to be supplied to the Buyer.
- 14.3 The Supplier acknowledges that all working drawings, labels, Specifications, manufacturing data, plans, designs, patterns, descriptions, information and components supplied by the Buyer in connection with any Contract or Order (**Buyer Materials**) together with any copies made by or for the Supplier and any Intellectual Property Rights in any or all of them:
- 14.3.1 shall remain the Buyer's exclusive property;
- 14.3.2 shall not be disclosed to any third party without the Buyer's written consent;
- 14.3.3 shall be used only for the purpose of fulfilling a Contract;
- 14.3.4 shall be returned to the Buyer forthwith upon demand.

14.4 The Supplier shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer, and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.

15. **Force Majeure**

Notwithstanding any other provision of these Conditions the Buyer shall be entitled (at its option) to suspend delivery of any Goods and/or cancel any Order and/or terminate any Contract for Goods if, due to any cause beyond its control (including but not limited to fire, explosion, flood, war, riot, unrest or terrorism, weather, any act of God (including without limitation lightning, tempest, storm, flood, earthquake, subsidence or other natural physical disaster), industrial action, strike, lock out, restraint, withdrawal or shortages of labour, stoppages of work, governmental intervention (domestic or other), epidemic (human or animal), health warning or advice from a statutory, regulatory or government department, breakdown of plant or machinery or malicious damage) it is hindered or prevented from taking delivery of or using or re-selling such Goods and it shall have no liability to the Supplier for any loss suffered or incurred as a result of such suspension, cancellation or termination and shall not affect the rights and liabilities of the parties already accrued at that time.

16. **Confidentiality**

16.1 Subject to clause 16.2 below, the Supplier shall keep in strict confidence and shall not announce or disclose:

16.1.1 the existence of any contractual arrangement between the Supplier and the Buyer or its terms; or

16.1.2 all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to it by the Buyer and any other confidential information concerning the Buyer's business, its products or services which the Supplier may obtain.

16.2 The Supplier shall only disclose such confidential information (as referred to in clause 16.1):

16.2.1 to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential;

16.2.2 as specifically agreed in advance by the Buyer; or

16.2.3 as required by law or the requirements of The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (informally referred to as "The London Stock Exchange").

Any such announcement or disclosure by the Supplier shall in any event be made only after prior consultation with the Buyer,

**17. Termination of Contracts**

- 17.1 The Buyer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Buyer shall pay the Supplier fair and reasonable compensation for work in progress at the time of termination, but such compensation shall not include loss of anticipated profits or business or any indirect or consequential loss.
- 17.2 The Buyer may terminate any Contract with immediate effect by giving written notice to the Supplier if:
- 17.2.1 the Supplier commits any material breach of any of these Conditions or of any other provision of any Contract; or
  - 17.2.2 the Supplier commits any act of bankruptcy or has a receiver or administrative receiver appointed of the whole or any part of its assets or if an order is made or resolution passed for its winding up or its business or the relevant party is the subject of any equivalent event or proceeding under the laws of any jurisdiction; or
  - 17.2.3 the Buyer reasonably apprehends that any of the events mentioned in clauses 17.2.1 or 17.2.2 is about to occur and notifies the Supplier accordingly.
- 17.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**18. Electronic Data Interchange (EDI)**

If the Supplier is included in the EDI system then the arrangements for the placing and receipt of Orders, invoicing and any other agreed EDI transactions shall be in accordance with the Buyer's Supplier Introduction Booklet relating to EDI and, in so far as the terms of such booklet conflict with any of these Conditions, the provisions of the Booklet will prevail. The procedures and other provisions set forth in such Booklet, as the same may be amended and notified to the Supplier from time to time, are deemed to be incorporated into these Conditions and, therefore, in any applicable Contract or Order.

**19. Disposal of Own-Label Goods**

In the event of the non-delivery to the Buyer, or the return to the Supplier for whatever reason, of any Goods which are manufactured, packaged or labelled in such a manner as to identify them in any way with the Buyer, the Supplier shall not under any circumstances dispose of those Goods to a third party without the prior written consent of the Buyer. Any specific instructions given by the Buyer in respect of such instructions shall be strictly adhered to by the Supplier and, in any event, all references to the Buyer's name, address, trademarks, and any other indications of the Buyer's identity shall be totally removed by the Supplier prior to disposal of such Goods so that no such reference remains which might lead any third party to associate the Goods with the Buyer.

**20. General**

- 20.1 The execution of a Contract shall not be sub-contracted nor assigned by the Supplier either wholly or in part and neither shall the Supplier assign in whole or in part the benefit of or under a Contract without the prior written consent of a director of the Buyer. Where the Buyer consents to the assignment by the Supplier of the whole or part of the benefit of or under a Contract, once it has received written notice of that assignment, it will render performance of its relevant obligations under that Contract to the named assignee until it receives written instructions to the contrary from both the Supplier and the named assignee save that in the event of a dispute between the Supplier and the named assignee the Buyer shall be entitled, at its sole discretion, to pay any sums due from the Buyer into court, or into a designated account pending the resolution of that dispute. The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

- 20.2 No waiver by the Buyer or the Supplier of any breach of any provision of these Conditions or any other provision of any applicable Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 20.3 If any provision of these Conditions is held by any court of competent jurisdiction to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 20.4 Any notice or other information required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and may be given by pre-paid registered post, special delivery or express delivery service or by facsimile transmission or by transmission via a reputable private courier company and any notice or information so sent shall be deemed to have been properly and effectively given, if sent by registered post, special delivery, express delivery service or by courier the day delivery is signed for on behalf of the addressee or, if sent by facsimile transmission or comparable means of communication, twenty-four (24) hours after it has been transmitted. Any notice or information sent to the Buyer shall be sent to the address shown on this agreement marked "for the immediate attention of the Company Secretary".
- 20.5 A person who is not a party to the Contract shall not have any rights under or in connection with it pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.6 All Contracts and these Conditions will be construed in accordance with the laws of England and the Supplier hereby agrees that the English courts shall have exclusive jurisdiction in relation to any claim brought by the Supplier against the Buyer but that the Buyer shall be entitled to bring a claim against the Supplier in any court of competent jurisdiction.