



Terms & Conditions Of Sale

For John West Branded Goods

Effective from March 2006



Foreword

We set out in this document our Conditions of trading which aim to provide a clear and up-to-date framework within which we can conduct business with you for our mutual benefit and profitability.

The Conditions are effective from March 2006 and apply to all our dealings with you, without modification, unless we notify you otherwise.

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1. What We Mean

1.1 In these conditions the following words have the following meanings:

"Delivery Slots" means a 30 minute period which is within Delivery Working Hours for delivery of the Goods agreed pursuant to Condition 2.4(b);

"Delivery Working Hours" means between the hours of 6am and 10pm on a Working Day;

"Goods" means any goods agreed in the Supply Agreement to be supplied to You by Us (including any part of parts of them);

"Intellectual Property" means any patent, copyright (including without limitation moral rights and software), database right, design right, registered design, trademark or service mark (registered and unregistered), domain name, know-how, utility model, unregistered design or other industrial or intellectual property right subsisting in any part of the world and, where relevant, any application for protection or proprietorship of any such right;

"On Time" means that the Goods are at Your premises plus or minus 30 minutes of the Delivery Slot for those Goods;

"Order Working Hours" means between the hours of 8.45am to 5pm on a Working Day.

"Product Recall" means as defined in Condition 11.5;

"Promotion Costs" means the costs of or arising from or relating to a Promotion;

"Promotion" means an offer for a specific period for sale of Goods at an introductory or reduced price or that gives to You and / or the consumer of the Goods some other additional benefit;

"Recall Goods" means the Goods which are the subject of a Product Recall;

"Retailers Code of Practice" means the Code of Practice on Supermarkets' Dealings with Suppliers as published by the Office of Fair Trading on 17 March 2002;

"Supply Agreement" means the contractual arrangement between Us (or where We are acting as an agent, Our principal) and You for the supply of Goods, incorporating these Conditions, and which without limitation may include documents, processes and manuals which We and You have agreed form part of the Supply Agreement;

"Working Day" means a day which is not a Saturday, Sunday or Bank or Public Holiday in England.

"We", "Us", "Our" means John West Foods Ltd which enters into the Supply Agreement (in its own right or as an agent for it's principal); and

"You", "Your", "Yourself" means the person(s), firm or company who purchases the Goods from Us.



2. Ordering

2.1 Basis of the Supply Agreement

The Supply Agreement shall apply to any arrangement with You for the supply of Goods unless expressly varied or disappplied. Subject to any variation under Condition 2.2, the Supply Agreement will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which you purport to apply under any purchase order, confirmation of order, specification or other document or notification or electronic data interchange or online or electronic ordering service or any form of communication whatsoever and whenever).

2.2 Amendments to these Conditions

Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by one of Our authorised signatories.

2.3 Effect of these Conditions

If We agree with You to incorporate documents, processes, manuals, pages of websites and other arrangements of contractual effect, then if there is a conflict or ambiguity between these Conditions and those other contractual arrangements, these Conditions will prevail.

2.4 Offer and Acceptance

Each order for Goods by You from Us shall be deemed to be an offer by You to purchase Goods subject to these Conditions. Any order shall be accepted in part or full entirely at Our discretion. Orders may only be accepted during Our Order Working Hours by Our issue of an order acknowledgement, unless otherwise agreed in writing. If an order is accepted then it is accepted subject to:

- a) Our confirmation that the Goods are available; and
- b) Both of us agreeing (within 5 Working Days of Our acceptance of an order) a Delivery Slot (or us accepting the Delivery Slot stated in your order) for the Goods for the subsequent delivery of the Goods to You in Delivery Working Hours; and
- c) If relevant, Our confirmation that We have not discontinued or altered the Good or Goods or Goods' product ranges and the manufacture of such Goods has not been hindered or prevented for any reason.

2.5 Our Rights to Cancel Your Order

We may cancel part or all of Your order and terminate the Supply Agreement, without incurring any liability to you, if;

- a) in accordance with Condition 2.4(b), We do not accept the Delivery Slot stated in your order and / or a Delivery Slot cannot be agreed with You which is acceptable to both of Us in the said 5 Working Days period; or
- b) in accordance with Condition 2.4(a), the Goods are not available (and We are unable to agree with You the supply of an alternative Good or Goods); or
- c) the Goods have been discontinued or altered or the manufacture of the Goods has in some way been hindered or prevented.



2.6 Our Receipt of Your Order

If You have not received Our order acknowledgement or You have not been contacted by Us to arrange a Delivery Slot, You must contact Our Logistics Representative in order to ensure that the order has been received and accepted; otherwise We shall have no liability to you.

2.7 Our Order & Delivery Requirements

We have minimum and maximum order and / or delivery levels for Goods or configurations of Goods which We will notify to You from time to time. If an order (either in itself or together with other orders placed by You) is below those minimum levels or configurations or above those maximum levels or configurations, We may at Our absolute discretion not accept those orders.

2.8 Accuracy of Your Order

It is Your obligation to ensure that Your order is complete and accurate. If the terms of an order are not complete or are inaccurate, then We at Our absolute discretion can choose not to fulfil that order. If We deliver Goods in response to an inaccurate order then You will accept delivery, pay for the Goods and otherwise comply with the Supply Agreement, as if the order was correct.

2.9 Our Delivery Working Hours

Unless otherwise agreed by Us, We shall not be obliged to deliver or (as set out in Condition 3.1(b)) make available for collection Goods outside of Our Delivery Working Hours.

2.10 Our Quotes & Estimates

Any quotation or estimate made by Us (including where it is given as part of a response to a tender) is given subject to these Conditions. Without prejudice to Our right not to accept an order as set out in Condition 2.4, quotations will only be valid for 14 days from date of issue.

2.11 Your Order Cancellation Rights & Obligations

You may at any time prior to the delivery of the Goods cancel Your order (or any part of an order) relating to those Goods by notifying Us. At the time of receiving Your cancellation notification, We may have incurred costs in relation to fulfilling that order (such as preparation of the order, picking transportation) or We may incur costs as a result of cancelling that order (such as costs arising from abortive or part or small deliveries), in which case, cancellation of such order will be subject to the payment of a cancellation charge (payable within 28 days of Our invoice) to reimburse Us for those costs. We will notify You of such cancellation charge as soon as reasonably practical when You seek to cancel the Order.

2.12 Discontinuation or Re-Design of Our Good(s) or Range(s)

If We decide to discontinue, re-design or otherwise alter any of Our Goods, the Goods product range, Goods specification, coding, packing or configuration, We shall provide You with as much notice as possible, typically a minimum of six (6) weeks prior notice of the exit / new product development date. By way of reminder, We do not operate a 'sale or return' policy at any time, nor are We prepared to fund any mark-down of any of Your stock.



2.13 Your Decision to De-List Our Goods

If You decide to de-list any of Our Goods or the Goods' product range, We would expect You to provide Us with as much notice as possible, which is at least six (6) weeks' prior written notice, unless We agree otherwise with You.

2.14 Retailers' Code of Practice

To the extent to which it is relevant, You will comply with the spirit and provisions of the Retailers' Code of Practice.



3. Delivery Issues

3.1 How We Deliver

Delivery of the Goods shall take place in Delivery Working Hours at Your normal place of business unless:

- a) agreed otherwise in writing by Us; or
- b) where You require, and We have agreed to the use of Your nominated haulier (back haulage), in which case the point of delivery will be when the Goods are collected and loaded on to Your nominated haulier transport at Our nominated premises.

3.2 Our Delivery Times

Although We will use Our reasonable endeavours to deliver Goods On Time, any dates and times specified by Us for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. Where (as set out in Condition 3.1(b)) the Goods are to be collected, then the time of delivery is when the Goods are made available for collection in accordance with the agreed collection slot. If no time is specified, delivery will be within a reasonable time.

3.3 Our Delivery Assurances to You

If We are unable to fulfil a Delivery Slot then We will endeavour to give You as much notice as possible and will seek to agree a new Delivery Slot with You in accordance with Condition 2.4 on a priority basis.

3.4 Delayed Delivery

We will not be liable for any loss (including without limitation loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Our negligence), nor will any delay entitle You to terminate or rescind the Supply Agreement.

3.5 Delayed Delivery Due to Events Caused by You

If We are unable to deliver the Goods On Time because:

- a) You have not provided appropriate instructions, documents, licences or authorisations;
- b) You have not accepted delivery (or, as set out in Condition 3.1(b), collected the Goods) despite the Goods being presented for delivery On Time; or
- c) The Goods would have been delivered On Time except that they were held in a queue at or near Your premises,

the Goods will be deemed to have been delivered, risk passing to You (including for loss or damage caused by Our negligence) and We may at Our absolute discretion:

- i. wait until You accept delivery of the Goods and charge You for all costs, charges and losses incurred by Us (including, without limitation, haulage charges) from the time that the Goods were available for delivery (whether at Your premises or in a queue);



- ii. store the Goods until actual delivery (provided that You agree within 3 Working Days of the original Delivery Slot a new Delivery Slot acceptable to Us) – in which case, delivery will be in accordance with the Supply Agreement, except that You will also be liable for all related costs and expenses (including, without limitation, storage, freezer, picking, loading, unloading, haulage, insurance and related overhead costs) arising from the failure to deliver; or
- iii. sell the Goods at the best price readily obtainable and charge You all related costs and expenses (including, without limitation, storage, freezer, picking, haulage, insurance, selling expenses, any related overhead costs and for any shortfall below the Supply Agreement price); or
- iv. if the Goods have no value (such as perishable Goods) destroy the Goods and charge You the Supply Agreement price plus all costs incurred (including, without limitation, storage, freezer, picking, loading, unloading, haulage and destruction charges); or
- v. terminate the Supply Agreement and charge You all costs and expenses incurred by Us (including, without limitation, storage, freezer, picking, loading, unloading, haulage, insurance and related overhead costs).

3.6 Failing of Your Delivery Point

If any of Your delivery points refuse or delay delivery of Goods or impose unreasonable restrictions or procedures or otherwise cause difficulties for delivery of Our Goods, and are not expressly entitled to do so in accordance with the provisions of the Supply Agreement ("Delivery Problems"), then if We notify you of those Delivery Problems, and You do not resolve them within a reasonable timeframe, then We shall be entitled, at Our absolute discretion, to suspend further deliveries of Our Goods to such delivery points.

3.7 Your Unloading Facilities

You will provide at Your expense at the place of delivery, adequate and appropriate facilities (to ensure dry, clean and safe unloading), equipment and manual labour for unloading the Goods. Our driver shall not be obliged to unload a vehicle or use any of Your machinery to enable You to meet Your obligation under Condition 3.13 below.

3.8 Back-haul and Your Obligations

Where (as set out in Condition 3.1(b)) You have required Us (or our agent) to use Your nominated haulier, then although We will be responsible to that haulier for the reasonable carriage costs for delivering the Goods, risk in those Goods passes to You on collection and loading of the Goods by Your haulier and We are not liable for any additional costs incurred in delivering the Goods including, without limitation, those arising from Your failing to accept or delaying collecting and loading of the Goods and therefore delaying delivery to Your premises. You are responsible for insuring these Goods from and including collection and loading. Your haulier is required to sign Our delivery note on loading the Goods and any delivery note marked "SIGNED UNCHECKED" will mean that We cannot accept liability for any delivery discrepancies or damage which would otherwise have been apparent on inspection upon collection by Your driver.



3.9 Our Outer Packaging

We shall use Our reasonable endeavours to ensure that the outer packaging for the Goods shall be reasonably suited for domestic transit in the UK, but shall have no further liability. Unless We otherwise notify You, We will deliver on GKN Chep Limited pallets which are the property of that company, and should be out-sorted and returned on a one for one basis. Alternatively, a valid GKN Chep Limited pallet collection voucher should be issued to the driver delivering which shall be signed or stamped and correctly record the quantity of pallets to be collected. You are responsible for ensuring packaging is adequate for onward transit, storage and use.

3.10 Delivery By Instalments

Although We normally make single deliveries, We may at our discretion make delivery of the Goods by instalments and invoice You for each instalment individually. Where the Goods are to be delivered in instalments (such as where not all the Goods ordered by You are available), each delivery shall constitute a separate contract and failure by Us to deliver any one or more of the instalments in accordance with these Conditions or any claim by You in respect of any one or more instalments shall not entitle You to treat the Supply Agreement as a whole as repudiated or to refuse to accept subsequent instalments.

3.11 Delivery Notes and Evidence of What We have Delivered to You

The quantity of any consignment of Goods as recorded by Us on Our delivery note or equivalent document upon delivery shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary. On Our delivery note, You must clearly record in full any damage or discrepancies which would be reasonably apparent in delivery, including, without limitation, any incorrect Goods, any visual damage or short deliveries. You must also sign or appropriately stamp Our delivery note **at the time of delivery** and return it, together with any damaged Goods or evidence of any other discrepancy apparent on delivery, to Our driver. Where it is not possible for You to return damaged Goods or evidence immediately with Our driver, You must ensure that Our driver or other Heinz personnel are given reasonable access to Your premises to verify any discrepancies or damage. **We will not consider accepting liability and in no circumstances shall You be entitled to set any amount off (in accordance with Condition 7.5) for any such damage or discrepancy, unless recorded on the delivery note for the Goods.** We shall accept no liability for any such damage or discrepancies should a delivery note be marked "**SIGNED UNCHECKED**".

3.12 Your Obligation to Inspect on Delivery

You shall be responsible for arranging for inspection of the Goods and ensuring the Goods comply with Your order on delivery. We shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after delivery or where You have not allowed Our driver or other personnel to witness that inspection.

3.13 Your Commitment on Turnaround Time

Off-loading, signed or appropriately stamped proof of delivery and authorised departure of the vehicle must take place 90 minutes after the commencement of the Delivery Slot.



3.14 Our Failure to Deliver

If We fail to deliver the Goods and We did not give any notice in accordance with Condition 3.3, then We shall have no liability for that failure to deliver (even if caused by Our negligence), unless You give written evidence to Our Logistics Representative of the failed delivery by the end of the Working day following the agreed Delivery Slot.

3.15 Scope of Our Liability for Failed Delivery

If You give notice to Us in accordance with Condition 3.11 or Condition 3.14, Our liability for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note for the price of the undelivered Goods against any invoice raised for such Goods.

3.16 When You have Legally Accepted Our Goods

You will be deemed to have accepted the Goods as being in accordance with the Supply Agreement unless:

- a) **Apparent Defects:** within 3 days of the date of delivery of the Goods (or in relation to perishable Goods before the next day), You notify Us in writing of any apparent defect or other failure of the Goods to conform with the Supply Agreement (which would be apparent upon reasonable inspection and testing of the Goods within 3 days, or in relation to perishable Goods within 2 hours of delivery); or
- b) **Latent Defects:** You notify Us in writing of any defect or other failure of the Goods to conform with the Supply Agreement within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery, failing which You shall not be entitled to reject the Goods and We shall have no liability for such defect or failure, and You shall be bound to pay the price as if the Goods had been delivered in accordance with the Supply Agreement.

3.17 Our Primary Packaging, Labelling and Trade Marks

You shall not at any time alter, remove or tamper with any primary packaging (excluding outer packaging) or any labelling or trademarks, or affix any additional trademarks or trade designations on to any Goods without Our prior written consent. In no circumstances shall You tamper with, remove or alter the "Use By" or "Best Before" date. You shall not seek registration of or use or associate with the Intellectual Property rights (whether in a Promotion or otherwise) belonging to or used by Us.

3.18 The Condition of Our Goods on Resale

You shall ensure that all Goods made available for resale are in the same condition (including, without limitation, packaging) as they were on delivery by Us, unless agreed otherwise by Us in writing.

3.19 Integrity of Our Labelling

You shall not sell or use the Goods after the "Best Before" or "Use By" date. In no circumstances shall You sell Goods which are damaged so that in Our reasonable opinion their integrity is compromised.



3.20 Best Before Dates

Unless otherwise agreed in writing, We give no warranty to the amount of time remaining from delivery of the Goods until expiry of the “*Best Before*” or “*Use By*” date marked on the Goods.

3.21 Multi-Packs on Resale

Where the Goods are supplied in special consumer packs which contain more than one unit (i.e. multi-packs), these are sold to You on the basis that they will be resold to the consumer in this format and You shall not split them into individual units.

3.22 Bar Codes

The printing of bar codes on Our outer cases is for convenience only and although We will endeavour to observe the EAN•UCC specifications, as administered in the UK by the Association for Standards and Practices in Electronic Trade – EAN UK Limited, We cannot accept liability for any loss (including, without limitation, loss of profit) costs, damage, charges or expenses caused directly or indirectly (even if caused by our negligence) attributable to the absence of or any error in such bar code printing.



4. Passing of Risk and Legal Title

4.1 When Risk Passes to You

The Goods shall be at Your risk from the time of delivery (which will be determined in accordance with Condition 3.1).

4.2 When Title Passes to You

Full legal title to and property in the Goods shall remain vested in Us (or where We are acting as an agent, Our principal) (even though they have been delivered and risk has passed to You) until:

- a) We have received payment in full, in cash or cleared funds, for all the Goods in accordance with these Conditions; and
- b) all other money payable by You to us on any other account or under the Supply Agreement or any other contract has been received by Us.

4.3 Your Obligations Prior to Transfer of Full Legal Title to You

Until full legal title and property in the Goods passes to You:

- a) You shall hold the Goods on a fiduciary basis as Our (or Our principal where We are acting as an agent) bailee;
- b) You shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to Us, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by Us) and are clearly identifiable as belonging to Us (or Our principal) and We shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving You reasonable notice of Our intention to do so;
- c) We may at any time, on demand and without prior notice, require You to deliver the Goods up to Us and We may repossess and resell the Goods if any of the events specified in Condition 15.1 occurs if any sum due to Us from You under the Supply Agreement or on any other account or under any other contract is not paid when due;
- d) for the purposes of this Condition 4, We, Our employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by You and / or any other location where any of the Goods are situated at any time without prior notice;
- e) We shall be entitled to maintain an action against You for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to You; and
- f) We hereby authorise You to use and / or sell the Goods in the normal course of Your business and to pass good title in the Goods to Your customers, if they are purchasers in good faith without notice of Our rights. This right shall automatically cease on the occurrence of any event set out in Condition 15.1 and / or if any sum owed to Us by you is not paid when due. If You sell the Goods prior to paying the full price thereof, You shall hold the proceeds of sale on trust for Us and shall immediately pay the proceeds of the sale into a separate bank account. At Our request, You shall assign to Us all claims that You may have against Your purchasers of the Goods.



4.4 Other Remedies

Our rights and remedies set out in this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any of Our other rights or remedies under the Supply Agreement or in law or equity.



5. Promoting with John West

5.1 Agreeing Promotion Funding

We will not have any liability for Promotion Costs unless:

- a) You have notified us in advance of the Promotion; and
- b) our authorised representative has agreed in advance in writing (including agreeing the amount of the Promotion Costs and the duration of the relevant Promotion) that We will be responsible for part or all of the Promotion Costs; and
- c) on Our request, You are able to demonstrate to Our reasonable satisfaction the amount of actual sales or sales which both parties have agreed will trigger a payment of Promotion Costs (including redemptions, vouchers and coupons) promptly after the end of the Promotion.

5.2 Long Stop Date for Presentation of Your Invoices

If We do Agree to pay for some or all Promotion Costs then those Promotion Costs must be claimed within 12 months of, and not before, the date of the end of the applicable Promotion, accompanied by reasonable adequate documentation evidencing the claim and shall not be paid earlier than in accordance with Our standard payment terms (as set out in Condition 5.7). **If the Promotion Costs are not claimed this way, then We will not have any liability for them.**

5.3 Forecasts Provided By You

Unless otherwise agreed with Us, You are responsible for ensuring any forecasts You provide are made in good faith and are compiled with due care and accuracy. You will only order Goods which in Your reasonable opinion and acting in good faith will be sufficient and not excessive for the Promotion. If We consider that the quantity ordered or forecast is unreasonable or excessive, then We may request You to (i) provide evidence of Your actual sales; and (ii) any Goods You have purchased for the Promotion, which have not been sold by You as part of the Promotion, will have their price adjusted to the price which would have applied if that Promotion had not taken place. We will then issue an appropriate invoice for the difference in amount due, which will be paid by You in accordance with the Supply Agreement.

5.4 Where We Have Made a Special Promotion Investment

You acknowledge that We may make a special investment specific to You in relation to a Promotion and therefore, We may agree with You a minimum order quantity and / or delivery configuration of Goods which will be the subject of the Promotion. You will then be obliged to purchase that quantity in that configuration.

5.5 Resale of Discounted Goods

Where the Goods are supplied by Us to You at a discount for promotional purposes, You agree that such Goods will only be sold to customers or retail consumers to whom the Promotion was originally intended.



5.6 Netting Off in Respect of Promotion Costs

If, as set out in Condition 7.4, We have agreed in writing to a set off which relates to a particular promotional activity, then You must (within 5 Working Days of the date of the invoice) provide reasonable justification of the set off, obtain Our written consent and issue an invoice to Us for the amount that is agreed to be set off, stating the number of Our invoice which is being set off against, purchase order number and a reasonable summary of the reasons for payment. **Please note that unless otherwise agreed in writing, no deduction shall be made by You before the later of the start of the relevant promotional activity or Our standard payment terms, as described in Condition 5.7 below.** For the avoidance of doubt, if the right of set-off is granted further to this Condition, the payment terms set out in Condition 7.1 shall not be effected.

5.7 Our Payment Terms

Full details of Our payment terms are set out in our standard terms and conditions for the purchase of goods; a copy of which can be requested during Office Working Hours by calling 0151 243 6200.



6. The Price of Our Goods

6.1 Price Increases

Unless otherwise agreed with Us, We will endeavour to provide You with a minimum of 4 weeks' prior written notice in respect of any price move, unless specific commodity market conditions dictate otherwise; in which case, We shall provide You with as much prior written notice as reasonably possible in the circumstances. We shall not be obliged to justify any change in the price of Goods and the new price will become effective from the date specified in Our notice to You. **Any orders placed on or after that date will be subject to the new price.** Subject to Condition 2.4, please note that We can only supply if You have accepted Our new price prior to the price move effective date.

6.2 The Price of Our Goods

Unless otherwise agreed in writing by Us, the price for the Goods shall be the price at the date of receipt of the order by Us (or if that date is not a Working Day, the first Working Day following receipt). That price shall be as We have agreed in writing (which includes any price list or price file specific to You in relation to any Good or Goods) in force at the date of receipt of the order by Us, provided that You agree a Delivery Slot for the Goods with Us in accordance with Condition 2.4.

6.3 Your Price File Information on Your Systems

In the event of a conflict between the price information in Our price files and the price information in Your price files, Ours shall prevail.

6.4 What could affect Our Price

If You request a variation to an order (such as to quantity, quality, place or date or time of delivery, or any other change to the Supply Agreement), then We may at Our absolute discretion vary the price in accordance with Condition 6.2; in which case, the reference to "date of receipt of order" is substituted by "date on which the parties agree the variation to order".

6.5 When We Can Change Our Price

At any time prior to the date of receipt of an order We may vary the prices for the Goods by notice to You.

6.6 What Our Price Includes and Excludes

Unless otherwise agreed in writing, the price for the Goods shall be exclusive of any value added tax, import or export duties or other similar taxes or levies and all costs or charges in relation to pallets and packaging, labelling, unloading, import and export; which You will pay on top of the price, where appropriate, when You are due to pay for the Goods. Unless otherwise agreed in writing, the price for the Goods is inclusive of carriage.



6.7 Maximum Resale Prices

You will not re-sell any Goods at a price higher than any maximum resale price that may be specified for those Goods by Us by notice in writing to You (such notice may establish a defined period, for such maximum resale price); for example, during a promotion. You shall set Your own resale price at any level that You may determine below that maximum resale price.



7. How and When You Pay Us

7.1 Your Payment Obligations

Unless otherwise agreed in writing payment of the price for the Goods is due 28 days from (and including) the earlier of:

- a) the date of delivery of Goods, unless the Goods are to be collected by You (i.e. back-haul) or You wrongfully fail to take delivery of the same; in which event, We shall be entitled to charge You for the price of the Goods at any time after We have notified You that the Goods are ready for collection or (as the case may be) We have tendered delivery of the Goods; or
- b) the date of invoice.

The payment period is not effected by any set-off or adjustment in accordance with Conditions 5.6 and 7.5.

7.2 When We Require Payment

Time for payment shall be of the essence.

7.3 Payment Mechanisms

No payment shall be deemed to have been received until We have received cleared funds. All payments shall be in UK pounds sterling or such other currency as We shall specify in writing. Payment by treasury notes should be sent by special delivery. BACS / CHAPS and credit transfers shall be made to the address notified to You by Us.

7.4 Our Right to Full Payment

You shall make all payments due under the Supply Agreement **without any deduction** whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise, **unless You have a valid court order requiring an amount equal to such deduction to be paid by Us to You or, exceptionally, where We have agreed to such set-off in advance in writing.**

7.5 Netting-Off in Respect of Discrepancies

If pursuant to Condition 7.4, We have agreed in writing to a set-off which relates to a claim in relation to the Goods (for example: the price, short loads or other disputes about delivery) and which are the subject of the invoice, then You must notify Us in writing, obtain Our written consent and issue a debit note within 5 Working Days of date of the invoice. **If You fail to follow this procedure then You may not set off that amount.**

7.6 When Payment Becomes Due

Notwithstanding any other provision, all payments payable to Us under the Supply Agreement shall become due immediately upon termination of the Supply Agreement for whatever reason.



7.7 Reference to Correct Invoice Identification Numbers

If payments received from You are not stated to refer to a particular invoice, We may appropriate such payment to any outstanding invoice addressed to You from Us.

7.8 Receipts

We will not issue any receipt for payment made by cheque or BACS / CHAPS / credit transfer unless specifically requested by You in advance in writing. However, we will issue a receipt for cash payments.

7.9 No Credit Facility Offered

No indulgence granted by Us to You concerning Your obligations under this Condition 7 shall be or be deemed to be a credit facility, but if any such facility is granted to You by Us, We may withdraw at Our sole discretion at any time.

7.10 Treatment of Late Payments

If any sum due from you to us under the Supply Agreement or any other contract is not paid on or before the due date for payment, than all sums owing by You to Us shall become due and payable immediately and, without prejudice to any other right or remedy available to us, We shall be entitled to:

- a) cancel or suspend performance of the Supply Agreement or any order, including, suspending deliveries of the Goods and suspending delivery of any other Goods to You until arrangements as to payment or credit have been established which are satisfactory to Us;
- b) appropriate any payment made by You to such of the Goods (or any goods supplied under any other contract between You and Us) as We may think fit;
- c) require You to pay for Goods prior to their despatch or collection from our place of business; and
- d) charge You:
 - i. interest calculated on a daily basis on all overdue amounts (both before and after judgement) (i.e., from the 29th day in accordance with Condition 7.1) until actual payment at the rate of six per cent (6%) per annum above the base lending rate of HSBC Bank plc prevailing from time to time until payment is made in full; and
 - ii. the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

7.11 Your Credit Status

Each Supply Agreement shall be subject to Us being satisfied as to Your credit status both prior to and during the period of the Supply Agreement. We shall not be obliged to reveal the source or provide evidence of these checks. If We become dissatisfied at any time with Your credit status, We may suspend performance of the Supply Agreement until You satisfy Us as to Your creditworthiness or give Us such security as We shall deem appropriate for the full value of the Goods.



8. Our Promise to You

8.1 Our Assurance

We warrant that all Goods which are food and intended for human consumption shall up to and including the final day of expiry of the "*Best Before*" period or the "*Use by*" date, as marked on the Goods, comply fully with all UK legislation relating to the manufacture and supply of food including the Food Safety Act 1990 is in force at the date of Your order.

8.2 Treatment of Defective Good(s)

If You establish to Our reasonable satisfaction that there is a defect in the Goods or the Goods are not otherwise in accordance with the Supply Agreement then We shall at Our option, at Our sole discretion, and within a reasonable time:

- a) where relevant repair or make good such defect or failure in such Goods free of charge (including all costs of transportation of any Goods or materials to and from You for that purpose);
- b) replace such Goods with Goods which are in all respects in accordance with the Supply Agreement; or
- c) issue a credit note to You in respect of the whole or part of the Supply Agreement price of such Goods as appropriate having taken back such materials relating to such Goods,

subject, in every case, to the remaining provisions of this Condition 8, provided that our liability under this Condition 8 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of Our liability under this warranty.

8.3 Your Obligations in Relation to Defective Goods

Condition 8.2 shall not apply unless You:

- a) Notify Us in writing of the alleged defect for perishable Goods within 24 hours of the perishable Goods "*Use by*" or "*Best Before*" date, and for all other Goods within 14 days of the time when You discover or ought to have discovered the defect and in any event within one week of the "*Best Before*" or "*Use By*" date; and
- b) Afford Us a reasonable opportunity to inspect the relevant Goods and, if We so request and where it is reasonable to do so, promptly return to Us or such other person We may nominate a sample of the Goods within 24 hours, carriage paid by You, for inspection, examination and testing and / or otherwise permit Us to have access to the Goods at Your premises or other location where they may be for such purposes.

8.4 Your Obligations on Agreed Uplifts

Where we have agreed to replace the Goods in accordance with Condition 8.2(b), You are obliged to:

- a) mutually agree with us in advance a collection slot which is in Our Delivery Working Hours;
- b) ensure that the Goods to be collected are in the same condition and correspond with the same description and quantity, as stated in Our uplift note and are ready



for collection on GKN Chep pallets (or such other pallets that We notify to You); and

- c) provide Us with at least 4 Delivery Working Hours notice in the event that the Goods will not be ready for collection at the agreed collection slot and seek to mutually agree a new collection slot with us on a priority basis.

8.5 Our Replacement Obligations

If We elect to replace the Goods pursuant to Condition 8.2(b), We shall deliver the replacement Goods to You at Our own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in You) re-vest to Us.

8.6 Where We Have No Liability to You in Respect of Defects

We shall be under no liability under the warranty at Condition 8.2 above:

- a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions arising after Our delivery of the Goods;
- b) failure to follow Our instructions (whether oral or in writing), including, without limitation, storage instructions;
- c) where the Goods are frozen food, failing to keep the Goods at a temperature of –18°C (0°F) or below, or where Goods are chilled food products failing to keep the Goods at a temperature between +2°C and +7°C (35.6 to 44.6°F);
- d) where Goods are hermetically sealed such as in cans, pouches or jars, failing to keep the Goods at a temperature of +2°C (35.6°F);
- e) where Goods held under ambient storage are not kept free from condensation;
- f) misuse or alteration or repair of the Goods without Our approval;
- g) where You incorporate or apply a material process to the Goods and no liability under Condition 8.2 would have arisen but for that incorporation or material process;
- h) if the total price for the Goods has not been paid by the due date for payment;
- i) if You make any further use of the Goods after giving notice in accordance with Condition 8.3.

8.7 Exclusions

The warranties set out in these Conditions are the only warranties which shall be given by Us and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Supply Agreement.

8.8 Our Goods Specification

We reserve the right without liability to You to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which do not materially affect the quality or performance of the Goods.



9. Exclusion and Limitation of Liability

9.1 Scope of Our Liability

Conditions 2.5, 2.6, 3.4, 3.12, 3.14, 3.15, 11.10 and 11.12 and the following provisions set out Our entire liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:

- a) any breach of the Supply Agreement; and
- b) any representation, statement or tortuous act or omission including negligence arising under or in connection with the Supply Agreement.

9.2 Legal Liability

Nothing in the Supply Agreement excludes or limits Our liability for death or personal injury caused by Our negligence, or for fraudulent misrepresentation.

9.3 Our Maximum Liability

Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Supply Agreement shall be limited to 150% of the price of the Goods in respect of which You suffered or incurred such loss or damage.

9.4 Limitation of Scope of Our Liability

We shall not be liable to You for any loss of profit or other economic loss (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or loss or damage (contractual, tortuous, breach of statutory duty or otherwise) which arises out of or in connection with the Supply Agreement.

9.5 Your Obligation to Insure

The price of the Goods has been calculated on the basis that We will exclude or limit Our liability as set out in the Supply Agreement and You, by placing an order, agree and warrant that You shall insure against or bear Yourself any loss for which We have excluded or limited its liability in the Supply Agreement and We shall have no further liability.



10. Your Indemnity to Us

10.1 Your Indemnity to Us

You irrevocably and unconditionally agree to indemnify Us, Our employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Supply Agreement:

- a) any breach by You of Your obligations under the Supply Agreement;
- b) any breach by Us of Our obligations under the Supply Agreement or any other act or omission (including without limitation, negligence) of Our employees and agents in excess of Our liability under the Supply Agreement;
- c) any failure by You to comply with Condition 11.



11. Safety First

11.1 Our Product Guidelines

You shall comply at all times with Our written instructions and all written guidelines issued from time to time by Us relating to the Goods concerning their storage, application, resale, recall and use and You shall refer Your employees and your customers to such instructions and guidelines. Our instructions and guidelines, and requirements set out in Condition 11 and 12 override any of Your procedures, instructions or guidelines.

11.2 Do You Have a Product Recall Policy?

On request from us, You shall provide Us with a copy of Your product recall policy.

11.3 Your Obligations in Relation to Our Goods

You should satisfy Yourself that the persons responsible for the storage, application and the resale of any Goods supplied by Us have all the information required on health, safety, and food hygiene and We shall to the extent permitted by law and except as otherwise expressly set out in the Supply Agreement have no liability to You arising from Our breach of any applicable health, safety or food hygiene legislation or any regulations, orders or directions made pursuant to such legislation.

11.4 Your Co-Operation

Notwithstanding any other Condition, if We notify You in writing of any defect in or relating to the Goods previously delivered to You at any time or any error or omission which exposes or may expose consumers to any risk of death, injury or damage to property, You shall co-operate fully and promptly with any steps taken by Us under Conditions 11.4 – 11.8 (inclusive) below.

11.5 Recall Mechanisms

We may at Our discretion recall any Goods already sold by Us to Our customers (whether for a refund or credit or for replacement of the Goods which shall in each case be determined by Us) ("**Product Recall**") and / or issue any written or other notification to Our customers about the manner of use or operation of any Goods already sold by You to Your customers.

11.6 Your Necessary Assistance in a Recall Situation

If there is a Product Recall You will co-operate with us to ensure that the Product Recall is promptly and effectively dealt with including without limitation (where requested by Us or Our agent);

- a) advising promptly, and providing details to Us of, all retail outlets and trade customers to whom Recalled Goods have been supplied, and request such outlets and customers to comply with obligations equivalent to those in Conditions 11.4 to 11.8 (inclusive);
- b) ceasing to sell or distribute Recalled Goods;
- c) remove Recalled Goods from shelves at retail outlets and warehouses, return them to Your central location, isolate them from other Goods and label them as



- “QUARANTINED”, ensure that the Recalled Goods are not sold and make the Recalled Goods available for collection by Us;
- d) if specifically requested by Us destroy the Recalled Goods in accordance with Our guidelines and if required by Us, under the supervision of Our personnel or agent;
 - e) carry out stock audits to ensure all Recalled Goods have been identified and removed;
 - f) display product recall notices, provided by Us, at all outlets;
 - g) provide contact details (including 24 hour telephone contact) of Your relevant personnel responsible for arranging the Product Recall;
 - h) allow Our personnel or agents reasonable access to Your premises to allow audits to take place to check the effectiveness of the Product recall;
 - i) ensure all of Your relevant personnel are aware of and prepared for applying the Product Recall procedures set out in Condition 11;
 - j) complete and return to us Our Product Recall checklists that We provide to You.

11.7 Communication of a Recall

A Product Recall and procedures relating to it may be communicated to You by Us by any reasonable means including via trade publications.

11.8 Your Obligation to Update Us on Recall Status

On request from Us, You shall report on how You have implemented the Product Recall procedures set out in this Condition 11 and the requirements set out in Condition 12.

11.9 Renewal of Supply

We may at Our absolute discretion only supply Goods once We are satisfied that You have complied with the obligations set out at Conditions 11.4-11.8 (inclusive).

11.10 Your Obligations

If You do not comply with Conditions 11.4 to 11.8 (inclusive) then We, subject to Condition 9.2, shall have no liability (including without limitation product liability and liability arising from Our negligence) for the Recalled Goods.

11.11 Recall Compensation

If We do initiate a Product Recall then subject to Condition 11.10 We shall pay to You as compensation:

- a) a refund of the price paid by You to Us for the Recalled Goods;
- b) reimburse You for any liability You directly incur to Your retail consumers (but not any other type of customer) in relation to Recalled Goods, to the extent You are legally obliged to in the absence of special contractual conditions.

11.12 Our Limitation of Liability

Except as set out in Conditions 11.11 and 9.2, We shall:



- a) have no liability to You in contract, statute, tort or otherwise for the Recalled Goods or other liability incurred relating to the Product Recall;
- b) have no liability to You for any product recall charges, expenses or penalties (including without limitation fixed charges) whether notified to Us at all, or before or after a Product recall.

11.13 Legal Scope of Your Obligations

You shall ensure that Your customers, (and in turn Your customers' customers) who are not retail consumers, are obliged at contract to comply with the provisions of Conditions 11 and 12 and that We are given the ability to enforce those provisions directly against such customers.



12. How We Deal with Consumer Complaints

12.1 We Deal with Complaints

You are not authorised to make any representation on Our behalf in response to any consumer or other complaint.

12.2 Our Consumer Care Line Information

In the event of receipt of any complaint or query from a UK consumer in relation to Our Goods, please direct the consumer to Our Consumer Care department which can be contacted via our switchboard on 0151 243 6200.

12.3 Scope of Our Liability If You Decide to Deal with Consumer Complaints

If You deal with the consumer's complaint in relation to any Goods without reference to Us, then We shall have no liability except to the extent that We are liable to You under these Conditions, to a maximum of the price at which We sold the relevant Goods to You. We shall have no liability to You for Your costs or expenses, administrative or otherwise. We shall have no liability under this Condition unless You provide details of the reason for the complaint, the date of the complaint, the quality code for the relevant Goods and name and address of the relevant consumer.



13. Sub-Contracting, Assignment and Third Party Rights

13.1 No Sub-Contracting

You are not entitled to assign, charge, subcontract or transfer the Supply Agreement or any part of it without Our prior written consent.

13.2 Assignability

We may assign, charge, subcontract or transfer the Supply Agreement or any part of it to any person.

13.3 Third Party Rights

No other person who is not a party to the Supply Agreement (including any employee, officer, representative or sub contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act or otherwise) to enforce any provision of the Supply Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Condition. Even if a person who is not a party to this Agreement has a right to enforce any provision of this Agreement the parties may vary or cancel this Agreement between them without requiring the consent of such third party.



14. Force Majeure

14.1 Events which We cannot Reasonably Control and may Affect Supply

We reserve the right to suspend or to cancel the Supply Agreement in whole or in part (without liability to You) if We are prevented from or delayed in the carrying on of Our business and Our obligations under the Supply Agreement due to circumstances beyond Our reasonable control or those of Our suppliers and sub-contractors including, without limitation, Acts of God, pestilence, crop failure, disease, sudden raw product shortages which affect availability of that product on commodity exchanges, el nino, fire, flood, lightening, war, revolution, acts of terrorism, strikes, lockouts or other industrial action whether of the affected party's own employees or others, failure of IT system, power failure, fuel, transport, equipment, raw materials or other goods or services or where due to default of Our suppliers or sub-contractors.



15. Breaking or Terminating the Agreement

15.1 Our Suspension and Termination Rights

We may, as We think fit, (without prejudice to any other rights or remedies We may have against You) immediately suspend further performance of the Supply Agreement or delivery of Goods or stop any Goods in transit or by notice in writing to You terminate the Supply Agreement without liability to Us if:

- a) You commit a material breach of any of Your obligations under the Supply Agreement which is incapable of remedy;
- b) You fail to remedy a breach of Your obligations under the Supply Agreement which is capable of remedy, or persists in any breach of any of Your obligations under the Supply Agreement after having been requested in writing by Us to remedy or desist from such breach within a period of 14 days;
- c) any distress execution or diligence is levied upon any of Your goods or property and is not paid out within 7 days of it being levied;
- d) You (being a partnership) or Your partner offers to make any arrangements with or for the benefit of Your creditor or Your partner generally or there is presented in relation to You or Your partner a petition of bankruptcy;
- e) You (being a limited company) are deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or You call a meeting for the purpose of passing a resolution to wind up Your company, or such a resolution is passed or You present or have presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of Your business, undertaking, property or assets;
- f) You cease, or threaten to cease, to carry on business; or
- g) Your secured lender takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security; or
- h) You suffer or undergo any procedure analogous to any of those specified in Conditions 15.1(c) to (g) inclusive above or any other procedure available in the country in which You are constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor.
- i) You undergo a change of Control and for the purposes of this Condition 15.1(i), "Control" has the meaning specified in Section 416 of the Income and Corporation Taxes Act 1998;
- j) You act or omit to act in such a way as would in Our reasonable opinion bring Us into disrepute or otherwise damage Our reputation;
- k) We reasonably believe that any of the events specified in Condition 15.1(a) to (j) inclusive above is about to occur in relation to You.

15.2 Payments Due at Termination

Notwithstanding any such termination or suspension in accordance with Condition 15.1 above, You shall pay Us at the Supply Agreement rate for all Goods delivered up to and including the date of suspension or termination and the termination of the Supply Agreement or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any previous breach or in respect of any sum owing to or becoming owing to the other.

15.3 Survival of Certain Provisions After Termination

Any termination of this or any Supply Agreement (for whatever reason) shall not effect the coming into force of the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination



16. Legal Notices

16.1 Formal Communication with Us

All notices between the parties about this Supply Agreement must be in writing and delivered by hand or sent by pre-paid first class post or facsimile transmission:

- a) (in the case of notices to Us) to Our registered office or such other address as shall be notified by Us to You in accordance with this Condition 16; or
- b) (in the case of notices to You) to any address of Yours set out in any document which forms part of this Supply Agreement or such other address as shall be notified to Us by You in writing.

16.2 Receiving Notices

Notices shall be deemed to have been received:

- a) if sent by pre-paid first class post, 2 Working Days after posting (exclusive of the day of posting);
- b) if delivered by hand, on the day of delivery or if that is not a Working Day in the country of the recipient, the first Working Day after delivery;
- c) if sent by facsimile transmission, at 10:00am on the first Working Day following dispatch, subject to being able to show that the notice was sent to the correct telephone number.

16.3 Where to Send Notices To

Notices addressed to Us shall be marked for the attention of the Company Secretary and a copy to any person designated by Us in accordance with these Conditions.



17. Everything Else

17.1 Our Intellectual Property Rights

Any Intellectual Property Rights created by Us in the course of the performance of the Supply Agreement or otherwise in the manufacture of the Goods shall remain Our property. Nothing in the Supply Agreement shall be deemed to have given You a licence or any other right to use any of Our Intellectual Property Rights.

17.2 Structure

Nothing in the Supply Agreement shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

17.3 Waiver

The rights and remedies of either party in respect of the Supply Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance, or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Supply Agreement shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

17.4 Severance

If at any time any one or more of the Conditions of the Supply Agreement (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Supply Agreement and the validity and / or enforceability of the remaining provisions of the Supply Agreement shall not be in any way affected or impaired as a result of that omission.

17.5 Confidentiality

Both parties shall keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the provisions or existence of the Supply Agreement or any other confidential or sensitive information of the other party.

17.6 What You Say About Our Goods

You agree that in respect of the Goods You shall not engage in any unfair trade practices or make any false or misleading statement or representations in advertising, printed material or otherwise with respect to any of the Goods bearing Our name or trade marks or other Intellectual Property.

17.7 Promotion of Our Goods

You shall not advertise or promote the Goods or the supply of Goods to You by Us or carry out any product placement of the Goods without Our prior written consent.



18. The Courts & Law which Govern Our Relationship

- 18.1** This Supply Agreement and any dispute or claim arising out of or in connection with it shall be governed by and be construed in all respects in accordance with English law.
- 18.2** Any dispute or claim arising out of or in connection with the Supply Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.



19. Contacts

Postal Address	Lancaster House Tithebarn Street Liverpool L2 2GA
Main Switchboard	0151 243 6200
Facsimile Number	0151 236 5465
John West Consumer Care Line	0151 243 6200
Telesales Order Line	0151 243 6262
Telesales Fax Order Line	0151 243 6220
Customer Logistics Line	0786 060 5835
Customer Sales Accounting	0151 243 6225 0151 243 6203 0151 243 6287
Sales Operations / Admin	0151 243 6275 0151 243 6216 0151 243 6268 0151 243 6253
EDI	0151 243 6218

If you would like further copies of these Conditions of Sale, please do not hesitate to contact us on 0151 243 6200.