



General Terms & Conditions of Sale

Contents

1.	Interpretation	2
2.	Basis of Contract	4
3.	Delivery of Goods.....	5
4.	Quality of Goods.....	7
5.	Cancellations and Returns	8
6.	Title and Risk.....	9
7.	Customer's Additional Obligations	10
8.	Charges and Payment.....	10
9.	Set-off	12
10.	Confidentiality	12
11.	Limitation of Liability	12
12.	Termination	13
13.	Consequences of Termination	14
14.	Force Majeure	15
15.	Assignment and Subcontracting	15
16.	Notices	15
17.	Waiver	15
18.	Severance	16
19.	No Partnership	16
20.	Third Parties	16
21.	Variation	16
22.	Governing Law, Jurisdiction and Dispute Resolution.....	16

1. Interpretation

1.1 In these Conditions, the following definitions apply:

Applicable AIC Terms	the terms and conditions set out in the Agricultural Industries Confederation approved contract which is effective on the date of the Sales Contract Confirmation, and which is applicable to the Goods;
Business Day	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
Conditions	these terms and conditions (including the Sales Contract Confirmation) as may be amended by the Supplier from time to time in accordance with clause 21;
Contract	the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions any Supplementary Conditions (as applicable);
Control	the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise;
Customer	the person who purchases the Goods from the Supplier;
Delivery Location	has the meaning set out in clause 3.2;
Force Majeure Event	an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or directive, accident, breakdown of plant or machinery, adverse weather, crop failure, disease, pandemic (and any legally binding restrictions on the movement of people or goods imposed

	by government(s) as a result), fire, flood, storm or default of suppliers or subcontractors;
Goods	the goods (or any part of them) referenced in the Order, and as confirmed in the Sales Contract Confirmation;
Order	the Customer's order (written or oral) for the supply of Goods as confirmed by the Supplier in the Sales Contract Confirmation;
Sales Contract Confirmation	the confirmation of Order by the Supplier to the Customer in respect of Goods requested by the Customer;
Specification	in relation to Goods, the written specification for the Goods provided by the Supplier to the Customer, or otherwise agreed by the Supplier (from time to time);
Supplementary Conditions	those supplementary Conditions that also apply to the Contract depending on the type of Goods supplied and referenced on the Sales Contract Confirmation (and which may include Applicable AIC Terms as referenced on the Sales Contract Confirmation);
Supplier	Simpsons Malt Limited registered in England and Wales with company number 0153026 (which includes its trading division McCreath Simpson & Prentice); and
Supplier's Premises	has the meaning set out in clause 3.2.

1.2 In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate, firm or unincorporated body;

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes emails.

2. **Basis of Contract**

2.1 In the event of any inconsistencies between these Conditions and any Supplementary Conditions, each item in the list below shall prevail over the item or items lower in that list than that item:

2.1.1 the Sales Contract Confirmation;

2.1.2 these Conditions; and

2.1.3 the Applicable AIC Terms

2.2 The Order constitutes an offer by the Customer to purchase Goods from the Supplier, in accordance with these Conditions (and any Supplementary Conditions), which may be accepted or rejected by the Supplier at its sole discretion.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a Sales Contract Confirmation at which point and on which date the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties and subject to clause 11.1, the Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them (and, for the avoidance of doubt, they shall not form part of the Contract or any other contract between the Supplier and the Customer for the supply of the Goods).

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, Sales Contract Confirmation, invoice or other document of information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.6 No employee or agent of the Supplier has any authority whatsoever to alter, vary or waive these Conditions (or the Contract) in any way unless expressly authorised in writing by a Director of the Supplier. These Conditions (and any Supplementary Conditions), shall apply to all Goods supplied by the Supplier under the Contract. No employee or agent of the Supplier has any authority to make or

give any representation or warranty whatsoever in relation to the Goods and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Supplier.

- 2.7 Unless otherwise expressly stated in these Conditions or agreed in writing between the parties, these Conditions apply to the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referenced in the Contract.
- 2.8 Following receipt of an Order from a Customer the Supplier may carry out credit checks in relation to the Customer and any resulting contract for the sale of the Goods is in all respects conditional on the receipt of satisfactory results of such credit checks. In the event that the results of such credit checks are not to the Supplier's satisfaction, the Supplier may terminate the Contract, without liability to the Customer.
- 2.9 The headings throughout these Conditions are neither binding nor form part of these Conditions.

3. **Delivery of Goods**

- 3.1 The Supplier shall procure that:
- 3.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the delivery, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods; and
- 3.1.2 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note and the Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's reasonable cost and expense.
- 3.2 If referenced in an Order, the Supplier shall deliver the Goods to the location referenced in such Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. If the Order does not reference where the Goods are to be delivered, or a Delivery Location has not otherwise been agreed, then the Customer shall collect the Goods from the Supplier's premises at Tweedside Trading Estate, Berwick-upon-Tweed, TD15 2UZ or such other location as may be advised by the Supplier before delivery (**Supplier's Premises**)

within five (5) Business Days (or such other period as notified by the Supplier) of the Supplier notifying the Customer that the Goods are ready for collection.

- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or the completion of loading of the Goods at the Supplier's Premises (as the case may be). Delivery may be by instalment in accordance with clause 3.9.
- 3.4 Where the Supplier agrees to deliver the Goods to a Delivery Location:
- 3.4.1 if the Goods shall be required to be stored in a particular manner whether pursuant to statute, manufacturer's instructions or otherwise then it shall be a condition of the Contract that the Customer shall procure or provide (at the Delivery Location) storage facilities complying with such requirements and shall make arrangements to ensure that the Supplier's delivery operative has access to such facilities at the time of actual delivery. The Supplier shall be entitled to treat failure to make due provision in accordance with this clause 3.4 as failure to take delivery of the Goods; and
- 3.4.2 the Customer shall provide (or otherwise procure), staff and resources to enable the Goods to be safely, promptly and efficiently offloaded at the Delivery Location, and provide suitable access to the point of unloading.
- 3.5 Required Goods delivery dates or date ranges quoted in the Sales Contract Confirmation are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide discharge facilities and/or equipment (if any) or the Supplier with adequate and sufficient delivery instructions or any other instructions that are relevant to the supply of the Goods by the Supplier to the Customer.
- 3.6 If the Supplier fails to deliver the Goods, the Supplier's total liability shall be limited to the costs and expenses reasonably and properly incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide discharge facilities and/or equipment (if any) or the Supplier with adequate and sufficient delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 3.7 If the Customer fails to accept or take delivery of the Goods (including where relevant deliveries by instalment) within five (5) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 3.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 3.7.2 the Supplier reserves the right to store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance and storage).
- 3.8 If ten (10) Business Days after the Supplier notified the Customer that the Goods were ready for delivery or collection the Customer has not accepted or taken delivery of or collected such Goods, the Supplier may resell or re-price (as applicable) or otherwise dispose of part or all of the Goods.
- 3.9 The Supplier may deliver or make available (as the case may be) the Goods by separate instalments. Each separate delivery shall be invoiced and paid for in accordance with the Contract. Any delay in delivery, cancellation or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.10 The Customer shall not be entitled to reject the Goods if the Supplier delivers (including instalments) or makes available (as the case may be) up to and including five (5) per cent more or less than the quantity of Goods to be delivered or made available.
- 3.11 The Customer acknowledges and agrees that where Goods are to be delivered in instalments during the period agreed by the Supplier, the Customer shall remain bound to purchase those Goods in that period (**Commitment**). If the Customer fails to take delivery of the agreed Commitment, the Supplier shall have the option to charge the Customer (and where charged, the Customer shall pay), 25% of the value of the Goods not taken by the Customer as part of the Commitment, and the Supplier may sell such Commitment shortfall to a third party.
4. **Quality of Goods**
- 4.1 Subject to this clause 4, the Supplier warrants that the Goods shall conform in all material respects with their description and any applicable Specification and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 4.2 If:
- 4.2.1 the Customer gives notice in writing within a reasonable time (being not more than 5 Business Days) of discovery that some or all of the Goods did not comply with the warranty set out in clause 4.1;
 - 4.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 4.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's Premises at the Supplier's reasonable cost and expense;
- the Supplier shall, at its sole discretion, replace the defective Goods or refund the price of the defective Goods in full.
- 4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
- 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
 - 4.3.2 where the Goods supplied contain any recommendations (including labelled expiry or best before dates), warnings, instructions or directions as to methods of storage or use, and the defect arises as a direct or indirect result of the Customer's failure to follow such recommendations, warnings, instructions or directions;
 - 4.3.3 the defect arises as a result of the Supplier following any specification supplied by the Customer (if any); or
 - 4.3.4 the defect arises as a result of wilful damage or negligence of the Customer.
- 4.4 Subject to this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1, unless otherwise agreed in writing by a Director of the Supplier.
- 4.5 These Conditions shall apply to any replacement or alternative Goods supplied by the Supplier under clause 4.2.
5. **Cancellations and Returns**
- 5.1 No Order which has been accepted by the Supplier may be cancelled by the Customer and no Goods which have been supplied may be returned by the Customer to the Supplier (other than Goods which

are proved defective pursuant to clause 4) except with the agreement in writing of the Supplier and on the following terms:

5.1.1 no Goods will be accepted by the Supplier as returned Goods unless the Goods are in their original packaging unopened and in undamaged condition; and

5.1.2 where an Order is cancelled by the Customer or Goods are returned by the Customer, the Supplier reserves the right to charge the Customer, and the Customer shall pay, a handling charge of 10% of the value of the Goods.

6. Title and Risk

6.1 The risk in the Goods shall pass to the Customer:

6.1.1 in the case of Goods to be collected by the Customer from the Supplier, at the time the Customer or its agents, representatives or subcontractors collects the Goods from the Supplier's Premises; or

6.1.2 in the case of Goods to be delivered to the Delivery Location by the Supplier, on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods that the Supplier has supplied to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.5 (inclusive); and

6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time;

provided always that the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer:

6.4.1 the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.5 (inclusive); or

6.4.2 the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly;

then, provided the Goods (in whole or part) have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so, the Supplier (or its nominated representative) may promptly enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. **Customer's Additional Obligations**

7.1 In addition to the other obligations on the Customer set out in these Conditions, the Customer shall:

7.1.1 ensure that the terms of the Order and Sales Contract Confirmation together with any information the Customer provides in relation to the Specification, are complete, accurate and up to date;

7.1.2 co-operate with the Supplier in all matters relating to the Goods;

7.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods, and ensure that such information is accurate in all material respects;

7.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Goods before the date on which any Order is placed by the Customer; and

7.1.5 inform the Supplier of any changes to its business which may be relevant to the Contract (including, without limitation, changes to company structure, Control or name).

8. **Charges and Payment**

8.1 Unless otherwise notified in writing by the Supplier the price for Goods shall be the price set out in the Sales Contract Confirmation. The price of the Goods is inclusive of all costs and charges of packaging, insurance and transport of the Goods (where Goods are sold on a delivered basis), and when so notified, such costs shall be paid by the Customer when it pays for the Goods.

8.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

8.2.1 any increase in labour, carriage, materials and/or other manufacturing costs;

- 8.2.2 any request by the Customer to change the delivery dates, delivery location, quantities or types of Goods ordered, or the Specification in respect of the Goods;
- 8.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods; or
- 8.2.4 any change in any law or regulation applicable to the supply of Goods;
- provided always that the Supplier may not increase the price of any Goods more than once in any calendar year].
- 8.3 The quantity of Goods as recorded by the Supplier upon despatch from the Supplier's Premises shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive documentary evidence proving the contrary.
- 8.4 Subject to clause 8.3, the Supplier shall invoice the Customer on or at any time after completion of delivery or collection (including instalments) on the basis of the Goods delivered provided always that nothing in these Conditions shall prevent or restrict the Supplier requiring the Customer to pay for the Goods before delivery or collection.
- 8.5 Unless otherwise determined by the Supplier, the Customer shall pay for the Goods:
- 8.5.1 by the 28th day of the month following the month of delivery or collection of the Goods (or on receipt of the invoice if the invoice is issued after that 28th day); and
- 8.5.2 in full and in cleared funds; and
- time for payment shall be of the essence of the Contract.
- 8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 8.7 Without limiting any other right or remedy of the Supplier (including but not limited to pursuant to the Late Payment of Commercial Debt (Interest) Act 1998), if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 7.5 per cent per annum above the then current Bank of England's base lending rate accruing on a daily basis from the Due Date until

the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

8.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

9. **Set-off**

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

10. **Confidentiality**

10.1 A party (**Receiving Party**) shall keep in strict confidence all technical, financial or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents, representatives or subcontractors and any other confidential information concerning the Disclosing Party's business or its products (including but not limited to, the Goods), which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents, representatives or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

10.2 This clause 10 shall survive termination of the Contract.

11. **Limitation of Liability**

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); and

11.1.5 any other liability which it would be illegal or unlawful to limit or exclude liability for.

11.2 Subject to clause 11.1

11.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

11.2.1.1 loss of profit, loss of savings or anticipated savings, loss of reputation or goodwill, lost or delayed production, or loss of contracts, revenue or business (whether direct or indirect); or

11.2.1.2 indirect or consequential loss

in each case arising under or in connection with the Contract; and

11.2.2 unless otherwise agreed by the Supplier, the Supplier's total liability to the Customer in respect of all other losses arising under, or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the aggregate amount paid by the Customer to the Supplier pursuant to the Contract.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. Termination

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

12.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing of the breach;

12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

12.1.3 the other party (being an individual) is the subject of a bankruptcy petition or order;

12.1.4 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

12.1.5 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract at any time with immediate effect:

12.2.1 by giving the Customer written notice;

12.2.2 by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date; or

12.2.3 if there is a change of Control of the Customer.

12.3 Without limiting its other rights or remedies, the Supplier shall have the right (at its sole discretion) to suspend all further deliveries (including instalments) of Goods under the Contract if:

12.3.1 the Customer fails to pay any amount due under the Contract, or any other contract between the Customer and Supplier, on the Due Date; or

12.3.2 the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.5 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13. **Consequences of Termination**

On termination of the Contract for any reason:

13.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;

13.2 the Customer shall return any Goods which have not been fully paid for and if the Customer fails to do so, then the Supplier (or its nominated representative) may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and for insuring them, and will not use them for any purpose not connected with this Contract;

13.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

13.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. Force Majeure

14.1 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.2 If the Force Majeure Event prevents the Supplier from providing any of the Goods for more than 30 days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. Assignment and Subcontracting

15.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16. Notices

16.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.

16.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address, or if sent by post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17. Waiver

17.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18. Severance

18.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted or amended the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19. No Partnership

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20. Third Parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

21. Variation

Any variation by the Customer, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by a Director of the Supplier.

22. Governing Law, Jurisdiction and Dispute Resolution

22.1 All claims by the Customer relating to the supply of the Goods by the Supplier (**Claim**) must be notified by the Customer to the Supplier in writing immediately when the Customer becomes aware of the subject matter of such Claim or should reasonably have been so aware, and no Claim may be made unless thereafter a reasonable opportunity (being not less than 10 Business Days) is given to the Supplier to carry out such inspections and/or investigations in relation to the Claim which the Supplier reasonably regards as necessary or desirable. The Supplier shall not be liable in respect of any Claim unless and until the Supplier has taken every opportunity to minimise such a Claim.

22.2 If any Claim (as notified above) arises in connection with this Contract, the Supplier's representative and the Customer's representative shall, within 15 Business Days of a written request from one party to the other, meet in good faith to resolve the Claim.

22.3 If the Claim is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties,

the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will not start later than 20 Business Days after the ADR notice.

- 22.4 No party may commence any proceedings in relation to any Claim arising out of this Contract until it has attempted to settle such Claim by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 22.5 The Supplier reserves the right to demand samples of any Goods in relation to which the Customer is making a claim for breach of the warranties contained in clause 4.1. The Supplier and the Customer shall jointly appoint an independent person to be the official analyst for the purpose of the Contract who shall act as an expert and not as an arbitrator. If the Customer and the Supplier are unable to agree on the identity of the independent expert within 10 Business Days, such expert shall be appointed by either The Maltsters Association of Great Britain in respect of all malted cereal products or The Agricultural Industries Confederation in respect of all other products, as soon as reasonably practical. The results of such analysis shall be final and binding on the Supplier and the Customer save in the case of fraud or manifest error. The costs of the independent expert shall be paid by the parties in such proportions as the expert may determine.
- 22.6 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and (except those disputes which are to be referred to mediation in accordance with this clause 22) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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