

**Kinnerton (Confectionery) Company Limited****Terms and Conditions of Purchase****1. Definitions**

In these terms and conditions of purchase, the following definitions will apply.

- 1.1. "Company" or "Customer" shall mean Kinnerton (Confectionery) Company Limited.
- 1.2. "Supplier" or "Seller" shall mean any person or company that has offered or agreed to provide goods or services to the Company.
- 1.3. "Goods" means any goods or services to be supplied by the Supplier to the Customer or quoted in any Quotation.
- 1.4. "Contract" means any contract, including time-based supply agreements, for the purchase of Goods entered into between the Company and the Supplier.
- 1.5. "Quotation" means any quotation or estimate for the purchase of Goods issued by the Supplier.
- 1.6. "Specification" means the technical specification (if any) to which the Goods ordered by the Company are to be produced.
- 1.7. "Purchase Order" hereafter the "PO" means the Customer's official Purchase Order.

**2. General**

- 2.1. These Terms and Conditions of Purchase shall govern and form part of all Quotations and Contracts to the exclusion of any terms suggested or referred to by the Supplier.
- 2.2. No variation hereof shall be binding on the Company unless accepted in writing on behalf of the Company by a duly authorised representative of the Company.
- 2.3. The Company shall not be liable for payment of any charges relating to supply of Goods unless the PO provided and sent electronically is signed by an appropriate representative of the Company.

**3. Quotations**

- 3.1. Quotations shall remain open for acceptance for the period stated thereon and, if not stated, then for three months from their date of issue.
- 3.2. A Contract shall come into existence upon the written acceptance of a Quotation provided to the Supplier by the Company.
- 3.3. Prices quoted are exclusive of value added tax and refer only to the quantities and delivery terms mentioned in the Quotation. No additional costs will be accepted by the Company over and above those included in the Quotation unless accepted in writing by the Company.

**4. Prices**

- 4.1. All prices are exclusive of value added tax which (where payable) is payable by the Company in addition to the price of the Goods.
- 4.2. Unless otherwise agreed in a Contract, all prices provided by the Supplier in a Quotation shall include all costs incurred in packaging, insurance and carriage during transit from the Supplier to the Company.
- 4.3. The Supplier shall not be entitled to vary the price of the Goods at any time following acceptance of the price by the Company and in accordance with the price stated on the Company's official PO, unless such variation in price is accepted in writing by the Company.
- 4.4. The Supplier may not charge the Company in respect of moulds, tools, dies and other devices prepared to facilitate the manufacture of the Goods unless the charge has been previously agreed in writing by the Company. Ownership of any tools, dies and other devices ultimately funded by the Company shall transfer to the Company upon payment for such by the Company to the Supplier.

**5. Specifications**

- 5.1. The Supplier shall be responsible for ensuring that the Company has properly approved the accuracy and suitability of any Specification provided by the Supplier to the Company
- 5.2. Any particular condition or purpose that the Company wishes to advise the Supplier must be confirmed, in writing, to the Supplier by the Company. The Supplier is responsible for ensuring that all notifications of this nature are acknowledged in writing.
- 5.3. The Supplier shall indemnify the Company against all and any loss, damages, costs and expenses awarded against or incurred by the Company because of the Supplier's failure to acknowledge and follow written instructions regarding Specifications requested by the Company up to the limit of liability set out in 10.9.

- 5.4. Any deviations to the Specification that may be required because of applicable safety or statutory requirements, or to reflect advances in scientific or technical knowledge, or the manufacturing processes must be advised in writing by the Supplier to the Company prior to the Supplier starting production of the goods.
- 5.5. All Specifications and descriptions of Goods or processes contained in the Supplier's brochures or other material, electronic or other, from an integral part of any Contract.

## **6. Cancellation**

- 6.1. Any contracts or orders placed by the Company on the Supplier on the Company's official PO may be cancelled, in writing, by the Supplier within 24 hours of the date of the Company's official PO being sent. Thereafter, the supplier shall be liable to the Company for all costs or expenses incurred by the Company because of the Supplier cancelling the order.

## **7. Payment**

- 7.1. The price for the Goods shall be as stated in the PO and shall not be subject to any variation or adjustment, unless the Company agrees thereto in writing. The price is exclusive of VAT that shall be due at the rate ruling on the date of the Company's invoice.
- 7.2. All invoices must quote the Company's official PO number or, in exceptional circumstances agreed in writing by the Company, an official Requisition number.
- 7.3. The Supplier will invoice the Company for the Goods at, or at any time after, delivery of the Goods to the Company, or after collection of the Goods by the Company from the Supplier's premises. Invoices raised and dated prior to delivery of the Goods will be returned by the Company to the Supplier unless otherwise agreed to by the Company.
- 7.4. The Company will pay all invoices received from the Supplier in respect of Goods supplied by the Supplier to the Company, providing that all details exactly match those contained in the Company's official PO and that the Company is satisfied that the Goods have been provided properly and fully, evidenced by a suitable and recognisable proof of delivery.
- 7.5. All approved invoices received by the Company from the Supplier shall become liable for payment 60 days from the date of the Supplier's invoice or receipt of the Goods, whichever is the latter, unless different terms of payment have been agreed in advance in writing by the Company.
- 7.6. Under no circumstances will the Company be allowed the right to deduct any settlement discount for early payment unless this has been specifically agreed in writing by the Supplier.

- 7.7. The Company will not be liable for any costs, expenses or interest charges because of late payment of Supplier's invoices howsoever caused.
- 7.8. The Supplier shall not be entitled to cancel or suspend Contracts or existing PO's between the Supplier and the Company because of the Company's failure to pay any outstanding invoices from the Supplier to the Company.
- 7.9. The Company reserves the right to offset any sums owing by the Supplier to the Company against any sums owing by the Company to the Supplier, and the remedies provided into this clause shall be cumulative and not mutually exclusive and in addition to any remedies available to the Company under the general law or otherwise under these conditions.

## **8. Delivery**

- 8.1. The Goods, properly packed and secured in such a manner as to reach their destination in good condition, shall be delivered by the Supplier Delivered Duty Paid (DDP) unless other terms (INCOTERMS 2010) have been expressly agreed between the Supplier and the Company in the Contract.
- 8.2. Unless stated otherwise, delivery shall be deemed to have taken place when the Goods are delivered in full by the Supplier to the Company, or when collected in full by the Company from the Supplier's premises.
- 8.3. In the event that Goods are damaged or lost in transit, the Supplier, upon receiving notice to the effect from the Company, shall repair or replace free of charge the Goods and delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been received properly and in full.
- 8.4. Unless agreed in writing by the Company, the Supplier may not deliver Goods to the Company in instalments and must deliver the Goods in full on the date required and stated on the Company's official PO or as stated on the Company's official order call-off documentation.
- 8.5. Any Goods part-delivered by the Supplier without written agreement from the Company will not be deemed to have been delivered in accordance with clause 8.2 above, and will therefore not become liable for payment until full receipt of the balance in the normal manner.
- 8.6. The time stipulated for delivery or completion of the order is of the essence and may not be altered without the express written consent of the Company.
- 8.7. Any failure on the part of the Supplier to deliver or complete the Contract, as specified, will render the Supplier liable to pay any expenses or loss that the Company may incur as a result of late delivery, save for any delay caused by the Company; nor shall partial delivery constitute completion of the Contract and, in the event that the Company shall exercise its right to cancel the Contract or any part of it, the Company shall be entitled to purchase from

elsewhere Goods similar in quality to those of the Supplier and debiting the Supplier with the extra cost incurred, if any.

- 8.8. Unless otherwise agreed, Goods delivered by the supplier in excess of the quantities ordered will not be accepted and all charges in respect of recovering the Goods from the Company will be at the Supplier's responsibility. Any invoices raised by the Supplier to the Company for quantities over and above those quoted in the Company's official PO will be rejected by the Company.
- 8.9. If at any time the Supplier has reason to believe that delivery of the Goods may not be made as specified in the Contract, the Supplier shall immediately notify the Company setting out the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. If the Supplier's shipment is subsequently delayed, the Supplier shall, if so requested by the Company, reimburse the Company for all reasonable direct losses.
- 8.10. If requested by the Company and agreed in writing by the Supplier, the Supplier may produce the Goods and store the Goods prior to a later delivery date; but any stock holding costs incurred by the Supplier as a result will be entirely for the Supplier's account for the first 90 days except where an alternative stock holding period has been agreed in writing with the Company.

## 9. **Risk and Title**

- 9.1. Risk and Title in the goods shall pass to the Company upon delivery. The Company may request the Supplier to hold stock and to deliver Goods as called off by the Company. The Supplier will accommodate these requests entirely at the Supplier's expense save as for provided in section 8.
- 9.2. Within a reasonable time (no more than 3 months) after delivery, the Company may, by notice to the supplier, reject any of the Goods which are found not to be in accordance with the Contract and the Specification; and, if so rejected, shall be returnable at the Supplier's risk and expense. The Supplier, if requested, shall immediately and without prejudice to any other rights of the Company, replace or repair the defective Goods.
- 9.3. Any payment made by the Company to the Supplier in respect of any rejected Goods not replaced by the Supplier, together with any additional expenditure reasonably incurred by the Company, in obtaining other goods or services in replacement or at the Company's option in making the Goods delivered fit for their purpose and / or to accord with the Contract, shall be paid by the Supplier to the Company.
- 9.4. The expenditure referred to in 9.3 shall include the cost of freight, unpacking, examining, re-packing, storing, production losses and similar expenses.

## 10. **Warranty and Liability**

- 10.1. The Company warrants that the Goods will conform entirely in accordance with any Specification agreed in writing between the Company and the Supplier.
- 10.2. All Goods supplied under the Contract will comply with the Specifications and with all relevant laws, statutory requirements, regulations and codes of practice in force from time to time in the United Kingdom, European Union and otherwise. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods. In addition, the Goods shall be marked and labelled in accordance with the Company's instructions, any applicable regulations and any specific requirements of the carrier.
- 10.3. All Goods intended for use as food or in the preparation or packing thereof or in contact there with, are bought on condition of that, and the Supplier warrants that they do not contain anything rendering them or which may render them unsuitable for such a purpose. The Supplier warrants that they are of the nature, substance and quality described in the Specification and that they conform in all respects with the requirements of The Food Act 1984, The Materials and Articles in Contact with Food Regulations 1987 and all other statutes and/or regulations relating to the storage, preparation and sale of food, currently in force in the United Kingdom or European Union.
- 10.4. The Goods supplied shall comply as shall any statement in relation to them in all respects with The Trades Descriptions Act 1968 and 1972 and all regulations made there under and shall conform in all respects with the requirements of The Health and Safety at Work Etc. Act 1974 and associated legislation. Information and advice regarding the operation or use of the Goods together with the notice of potential hazards and safety precautions to be taken, shall be submitted to the Company in writing or other permanent form and should be clearly marked on the Goods and all external packaging.
- 10.5. The Supplier shall, prior to delivery, notify the Company giving details of Goods which are perishable or have a life expectancy of a limited period and of any circumstances likely to affect the quality of the Goods and shall issue appropriate instructions as to the storage, handling and use of the Goods. Such details and instructions shall form part of the Specification.
- 10.6. If the Supplier suspects or becomes aware that any Goods do not comply fully with clauses 10.1 to 10.5 above, the Supplier shall (a) immediately give written notice to the Company and consult fully with the Company in respect of the same; and (b) take such action and provide such assistance (at the Supplier's own cost) as the Company may require in order to deal with the matter in the manner it considers appropriate.

- 10.7. The Company reserves the right to remedy any failure in the above by rectifying, at the Supplier's own expense, any non-conformance with the Specification prior to the return, cancellation and / or non-payment for the Goods by the Company.
- 10.8. The Supplier hereby agrees to indemnify the Company and hold the Company harmless from and against all reasonable direct injury, damage, costs, liabilities and expenses suffered directly by the Company or as a direct result of (a) the Goods; and/or (b) any work carried out by the Supplier on the Goods; (c) any services performed by the Supplier; and (d) any failure of the Supplier or the Goods to comply with clauses 10.1 to 10.7 above. This indemnity shall include, without prejudice to its generality, any such liability under the provisions of the Consumer Protection Act 1987.
- 10.9. The Supplier's liability will be limited to £1,000,000, whether under breach of contract, negligence or otherwise; save that Supplier shall accept liability for any negligence of the Supplier and its employees for death or personal injury, without limit.

## 11. **Inspection & Shortages**

- 11.1. The Company shall inspect the goods and shall notify the Supplier, in writing, within seven (7) working days following the time and date of Delivery of any shortages or other issues surrounding the Goods delivered. This clause will not place any limitations on the Company from rejecting goods under clause 9.2.
- 11.2. If the Company fails to inspect the Goods or fails to notify the Supplier of any issues surrounding the Delivery of the Goods within a maximum seven (7) working day period following the time and date of Delivery, then any signature on any delivery documentation, goods received note or otherwise will imply acceptance by the Company that the Goods have been satisfactorily inspected.
- 11.3. The Company will be liable to the Supplier for all Goods provided by the Supplier to the Company and confirmed by receipt of a signed delivery note or other delivery documentation, per 11.2, unless notified in writing within seven working days following the time and date of Delivery of the Goods. The Supplier will invoice the Company in accordance with the delivery documentation unless advised in writing within seven working days of Delivery.
- 11.4. Any Goods that, following inspection, are deemed by the Company to not meet the standard specified in the Specification shall be identified to the Supplier and thereafter, the Goods shall be inspected, collected, disposed of, replaced or refunded, as determined by the Supplier, with all costs incurred by the Supplier as a result being to the account of the Supplier.

**12. Intellectual Property Rights**

- 12.1. Notwithstanding prior agreements between the Company and the Supplier on the treatment of confidential information or except as expressly provided in this Section, nothing in this Agreement shall alter in any way grant or transfer to any Party any Intellectual Property Rights. All Recipes, Specifications, Products and Improvements are and will always remain the exclusive property of the Supplier and are and will be Confidential Information of the Supplier.
- 12.2. No license or assignment of any copyright trade mark, registered design, patent or any other intellectual or industrial property right of the Company is intended to or shall be made by virtue of any Contract except to the extent that the use of the Goods in the normal course of business necessitates or the incidental use of any other intellectual or industrial property of the Company the doing of which is licensed with effect from the acceptance of the Company's official Purchase Order.
- 12.3. The Supplier shall take all reasonable steps to protect all intellectual property rights of the Company in or connected with the Goods.
- 12.4. The Supplier shall notify the Company of all actual or threatened infringements of the Company's intellectual or industrial property rights or claims or allegations that the Goods or their use constitute a breach of any intellectual or industrial property right of any third party and co-operate fully with the Company at the Supplier's expense in all reasonable steps to prevent or stop such infringements or to defeat any claim or allegation.
- 12.5. The Supplier shall make no admission in respect of any claim or action brought or threatened by any third party alleging or involving an allegation that the Goods or their use constitute a breach of any intellectual or industrial property right of such third party. The Company shall be entitled to conduct or control the conduct of negotiation, discussion, correspondence or proceedings in respect of any such claim or action. The Supplier shall execute all documents and do all such other things as the Company may request of it during any such claim or action and the Supplier shall indemnify the Company against all costs, liability, damages, expenses or claims in relation thereto.
- 12.6. The Supplier shall use its reasonable endeavours to keep confidential any confidential information disclosed to it by the Company whilst the same shall not have entered the public domain.
- 12.7. All plans, drawings, specifications and patterns relating to the Goods which are delivered by the Company to the Supplier shall remain the property of the Company. The Company shall keep the Company property separate and readily identifiable as the Company's property. The Supplier shall, at its own expense, keep the Customer's property insured for full replacement value against all usual risks and apply proceeds of such insurance for replacement of the Company's material and/or property. The Supplier shall store safely, treat with care and keep in good condition (fair wear and tear excepted) all the Company's materials and/or property. The Supplier shall permit the Company to inspect the Company's property at any time during



normal business hours. The Supplier shall at its own expense make good or replace all the Company's materials and/or property damaged or lost due to its own negligence and forthwith on completion of the Contract, shall return it to the Company in good condition.

- 12.8. No such plan, drawing, specification or technical information shall be shown, nor its contents disclosed to any other person nor shall it be copied or used for any other purpose than for the completion of the Contract. Any copies shall on completion of the Contract be returned to the Company.
- 12.9. On completion of the Contract it is agreed that, where the Supplier has developed the Goods following a written specification and / or brief from the Company, such intellectual property rights in the Goods shall be transferred immediately to the Company.
- 12.10. Any tool, jig, pattern fixture or other item that is required for the execution of and made specifically for the Contract, becomes the property of the Company on completion of the Contract, unless specifically agreed otherwise by the Company in writing.
- 12.11. The Supplier shall not sell to any one other than the Company, any Goods developed solely for the benefit of and under the direction of the Company unless a separate agreement is formally concluded and signed by the Company or unless the Contract has been terminated under clause 13.

### 13. **Insolvency of the Supplier**

- 13.1. The Company reserves the right to terminate any outstanding Contracts or orders with the Supplier if the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation.
- 13.2. In addition, the Company reserves the right to do likewise if the Supplier ceases, or threatens to cease, to carry on business.
- 13.3. In addition, the Company reserves the right to do likewise if the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly
- 13.4. If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall, at its sole discretion be entitled to cancel all or any outstanding Contracts or suspend any further deliveries under any Contracts or withhold payment for any previous deliveries made under Contracts.

**14. Force Majeure**

14.1. The Company shall not be under any liability to the Supplier for any loss incurred by the Supplier arising out of the failure of the Company to fulfil its obligations hereunder where such failure is due to events out of the control of the Company (which events shall include, but shall not be limited to, acts of God, war, civil unrest, strike, lock-out or other industrial actions and transport failure).

**15. Publications and Confidentiality**

15.1. The Supplier shall not, unless expressly authorised by the Company in writing, in any manner advertise or publish the fact that the Supplier has contracted to furnish the Company with the Goods. The Supplier shall keep in strict confidence all information relating to the products, business, technology, procurement or technical requirements of the Company or its associated companies which may come into the Supplier's possession in the course of carrying out the Contract and the Supplier shall not, without the Company's written consent, use or disclose the same to any person for any purpose other than for the execution of the Contract, including commercial and / or personal gain by the Supplier or his designees.

**16. Anti-Bribery**

16.1. The Supplier, (which for purposes of this clause 17 shall include all of the Supplier's employees, agents, representatives, affiliates and any person who performs services on behalf of the Supplier ("Representatives")) agrees with the Company that it will not, in connection with the Goods, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value)) the Company, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("Relevant Party").

16.2. The Supplier represents and warrants to the Company that it has not, prior to the date of this Agreement, bribed or attempted to bribe any Relevant Party to secure any business from the Company whether in connection with this Agreement or otherwise.

16.3. The Supplier acknowledges and agrees on behalf of the Supplier and the Supplier's Representatives that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.

16.4. The Supplier agrees that it will not take or knowingly permit any action to be taken that would cause the Company to be in violation of any applicable anti-bribery or anti-money laundering laws.

- 16.5. The Supplier agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Supplier whether under this Agreement or otherwise, and the Company (and the Company's authorised representatives) shall have the right to inspect and audit the Supplier's books, records and accounts at any time on prior written notice.
- 16.6. If the Supplier discovers that it has or may have violated any of the provisions in this clause 16, the Supplier shall immediately notify the Company and cooperate with any investigations by the Company into such matters.
- 16.7. Without prejudice to the generality of clauses 16.1 to 16.6 inclusive, the Supplier covenants with the Company to establish and always maintain and implement such anti-bribery policies and procedures as are reasonably required to prevent bribery or attempted bribery taking place on the Supplier's behalf.
- 16.8. The Supplier agrees that in addition to Company's termination rights set out elsewhere in this Contract, the Company may immediately terminate this Contract in the event of a breach of this clause 16 by the Supplier.
- 16.9. Without prejudice to the Company's rights to be indemnified under clause 10, the Company shall not be required to make any payments to the Supplier that might otherwise be due from the Company if such payments are related to a transaction in connection with which the Supplier has breached this clause.

17. **Law & Jurisdiction**

- 17.1. The conditions and any Agreement or Contract shall be construed and given effect according to English Law and the Company and the Supplier hereby acknowledge the exclusive jurisdiction of the English Courts.

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Signed on behalf of

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Print Name:

Print Name: Andrew Steele, Head of Procurement

Date:

Date: 28 May 2019