



Version 2.2

APPENDIX []
TO PURCHASE CONTRACT
STANDARD TERMS AND CONDITIONS FOR THE
PURCHASE OF GOODS
FOR THE ARLA FOODS GROUP OF COMPANIES

between



Arla Foods amba

VAT No.: 25313763

and

[Supplier]

VAT No.: XX
Company No.: XX |



STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS FOR THE ARLA FOODS GROUP OF COMPANIES

1.0 APPLICATION

- 1.1 These Terms shall apply to all of the Supplier's deliveries of Goods and related Services to the Buyer.
- 1.2 These Terms take precedence over all the Supplier's standard terms and conditions of sale and delivery and any terms and conditions contained therein. Such terms and conditions of sale and delivery shall be regarded as non-binding on the Buyer. This clause shall apply irrespective of whether such terms and conditions are printed on quotations, order confirmations, invoices issued by the Supplier or communicated to the Buyer in any other way, including by electronic transfer and whether issued at any time prior to or after these terms.
- 1.3 Any deviation from these Terms shall be subject to an express written agreement between the parties. Unless otherwise expressly stated in such written agreement, these Terms shall supplement such a written agreement. In the event that an agreement has already been made between the parties containing terms and conditions, which apply to the Supplier's deliveries of the Goods and/or Services, such an agreement shall be superseded by these Terms.
- 1.4 Nothing in these Terms shall prejudice any condition or warranty express or implied or any legal remedy to which the Buyer may be entitled in relation to the Goods and/or Services which are the subject of a Contract by virtue of any statute, custom or any general law or local law or regulations.

2.0 DEFINITIONS

- 2.1 "Buyer" means the company or companies identified as the purchaser of the Goods and Services in the Contract.
- 2.2 "Contract" means the purchase contract entered into between the parties for the purchase of the Goods and Services (including any Order placed by the Buyer and accepted and/or performed by the Supplier) and which incorporates and is subject to these Terms and all terms and conditions implied by law.
- 2.3 "Force Majeure" means any event or circumstance preventing a party from performing any or all of its obligations which is beyond the reasonable control of the party so prevented except for any event or circumstance which the affected party could reasonably have avoided or provided against, or strike lock out or other industrial action taken by the employees of the affected party or the employees or agents or sub-contractors of the affected party or any shortage of labour relating to the affected party or its agents

or sub-contractors, or the inability of the affected party or its agents or sub-contractors to obtain supplies or the default of the affected party's agents or sub-contractors.

- 2.4 "Goods" means any goods, including but not limited to raw or packaging materials, intermediates and/or ingredients described and/or referred to in the Contract and/or supplied by the Supplier to the Buyer under these Terms.
- 2.5 "Incoterms" means the ICC official rules for the interpretation of international trade terms as in force at the date when the Contract is made.
- 2.6 "Losses" means any and all awards damages fines penalties expenses legal remedies compensation costs (including legal costs) and all other liabilities whatsoever.
- 2.7 "Order" means the Buyer's purchase order howsoever given to the Supplier, including, without limitation, any order given in writing or by electronic or telephone means. The acceptance and/or performance of an Order by the Supplier shall constitute acceptance by the Supplier of these Terms.
- 2.8 "Replacement Supplier" means any third party supplier of services identical or substantially similar to all or part of the Services and which the Buyer receives in substitution for all or part of the Services following the termination or expiry of the Contract (and these Terms) appointed by the Buyer from time to time.
- 2.9 "Services" means any services described in the Contract and/or supplied by the Supplier to the Buyer under these Terms.
- 2.10 "Specifications" means the specifications for the Goods and/or Services as set out and/or referred to in the Contract together with any further specifications for the Goods and/or Services agreed between the parties.
- 2.11 "Supplier" means the person, firm, company or other entity identified as supplier in the Contract.
- 2.12 "Supplier Staff" means all personnel employed or otherwise engaged by the Supplier and involved in the supply of the Services including permanent, temporary and contract labour.
- 2.13 "Terms" means the STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS contained herein.



3.0 DELIVERY

- 3.1 The Supplier shall deliver to the Buyer the Goods purchased by the Buyer in strict accordance with the requirements under the Contract.
- 3.2 Deliveries shall be subject to any applicable Incoterms clause indicated in the Contract. If no Incoterms clause has been agreed upon or if the place of delivery is not fixed in the Contract delivery shall be made at the place of delivery indicated by the Buyer.
- 3.3 If an Order is despatched in separate consignments a delivery note (and invoice) is required for each consignment.
- 3.4 Subject to any applicable Incoterms clause, the Supplier shall be responsible for ensuring that transportation is in accordance with current laws, rules and regulations.
- 3.5 Packing cases, skids, drums and all other packaging materials and pallets are to be supplied free of charge. Pallets and empties will be returned at the Supplier's expense upon request. The Buyer accepts no liability for their return in good condition. Returnable containers must be stencilled with the Suppliers' name and address.
- 3.6 Risk in and ownership of the Goods shall pass from the Supplier to the Buyer on delivery.

4.0 GOODS

- 4.1 The Supplier warrants that the Goods, their packaging, wrapping and labelling and all their component parts shall: -
 - i. be of the nature, quality, substance, quantity and description specified in the Order;
 - ii. comply with the Specifications and with all applicable statutes and regulations including, but not limited to their design, construction, method of manufacture, processing, safety, labelling and the like in force from time to time, and if they are intended for use in or in connection with food or food ingredients or any machinery at the Buyer, which is in contact (direct or indirect) with food or food ingredients, comply with any specific applicable rules and regulations in the country of Buyer as well as any directives from Buyer regarding machinery or goods handling food and food ingredients;
 - iii. be of satisfactory quality and free of any defects in their design, materials and workmanship;
 - iv. be equal to the samples or patterns or any certificate or analysis or conformance provided or given by either party;

- v. be capable of any standard of performance specified in the Order;
- vi. be fit for the purpose for which they are purchased by the Buyer;
- vii. have been adequately inspected and tested during manufacture and prior to delivery in order to ensure compliance with all applicable statutes and regulations and the results of such inspections and tests will be supplied on request to the Buyer;
- viii. where appropriate, will be supplied with comprehensive instructions for use; and
- ix. be manufactured in accordance with good manufacturing practices, current legislation and the procedures/methods agreed. Where the Goods comprise food ingredients, processing aids, or products (whether for incorporation in the Buyer's food products or otherwise) the Supplier undertakes that neither the Goods nor any materials processed or used as processing aids to produce the Goods are either derived from genetically modified material or are themselves genetically modified, unless the Buyer has expressly agreed in the Contract to accept delivery of Goods which are so derived and full disclosure of the nature and extent of any genetic modification has been made to the Buyer prior to the Buyer's acceptance thereof.

- 4.2 The Supplier shall provide documentation on the processing and contents of the Goods and their components as well as their traceability as set forth in Clauses 4.3 and 4.4 below.
- 4.3 The Supplier shall be able to identify all direct and indirect suppliers from whom the Supplier has been supplied with substances intended to be, or expected to be, incorporated into food or in direct contact with food. The identification of substances including raw materials, primary packaging and other relevant packaging and processing aids, intermediate/semi-processed products, part-used materials, finished products and materials pending investigation, shall be adequate to ensure full traceability, and as a minimum such documentation shall include (i) name and address of supplier, (ii) nature of products delivered by the supplier, (iii) date of delivery, (iv) volume/quantity and (v) batch number.
- 4.4 The Supplier's traceability system and procedures must encompass all product ranges to ensure that traceability is maintained through the entire food chain from raw material to finished product and vice versa, including quantity check/mass balance. Where rework or any reworking operation is performed, traceability shall be maintained. The Supplier shall test the traceability system and procedures at a predetermined frequency and results shall be retained for inspection. Such documentation shall be kept by the Supplier for a period of five years from the time of delivery and shall upon the request of the



Buyer, be made available to the Buyer immediately and not later than 4 hours from receipt of such request.

4.5 The Buyer shall be entitled to conduct a notified relevant inspection of the Supplier's processing facilities and storage facilities and the raw materials and ingredients used for the manufacture of the Goods. Furthermore, the Buyer shall, prior to the dispatch of the Goods, be entitled to conduct such a notified inspection, test and/or check as the Buyer may wish. Any inspection, test and/or check carried out by the Buyer will not prevent the Buyer from subsequently rejecting the Goods in accordance with Clause 7 in these Terms or in accordance with any other rights under the Contract.

4.6 The Supplier acknowledges that it is aware of the special purposes for which the Buyer intends to use the Goods and warrants that the Goods are fit for such purposes and of a quality, which meets the Buyer's requirements. In respect of packaging material this especially applies with regard to design, strength, migration, barrier properties and materials.

4.7 The warranties afforded by the Supplier shall cease to exist two years after delivery of the Goods.

4.8 The Supplier may only amend, vary or modify the Specifications and the production processes (including the place of production, raw materials, ingredients and components used for the manufacture of the Goods) subject to the Buyer's prior approval in writing, and further provided that the Supplier warrants that such amendments, variations or modifications shall not adversely affect the quality or properties of the Goods or their fitness for purpose, or the Supplier's performance of its obligations under this Contract, including the validity of the warranties given under Clause 4 above.

5.0 DELAYS

5.1 The delivery of the Goods and Services, including any agreed documentation, shall take place at the time of delivery stipulated in the Contract. Time shall be of the essence.

5.2 The Buyer shall only be obliged to accept delivery of such quantities of Goods as are specified in the Contract. Unless otherwise agreed in writing the Supplier shall not be entitled to deliver in instalments. If delivery of Goods is by instalments, each delivery shall not constitute a separate contract and the failure by the Supplier to deliver any one instalment shall entitle the Buyer to treat the Contract as wholly repudiated by the Buyer.

5.3 As the Goods delivered under the Contract are intended for use in the Buyer's manufacturing processes immediately upon receipt of the Goods, any delay shall be regarded as a material/fundamental breach of the Contract.

5.4 In the event of any delay, the Buyer may elect, at its discretion, without prejudice to any other right or remedy, to claim either damages and/or a reduction in the purchase price, to cancel the Order (in part or in full) and/or to make a replacement purchase at the Supplier's cost.

6.0 FORCE MAJEURE

6.1 A party is not liable for a failure to perform any of its obligations if it proves that the failure was due to a Force Majeure and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the Contract or to have avoided or overcome it or its consequences.

6.2 A party wishing to call upon the exemption under Clause 6.1 above shall promptly notify the other party in writing of the commencement and cessation of any Force Majeure and use all reasonable efforts to mitigate the effects of such impediment on the other party.

6.3 A ground for relief under Clause 6.1 above relieves the failing party from damages and other contractual sanctions and further postpones the time for performance for such period as may be reasonable. In determining what is a reasonable period, regard shall be had to the failing party's ability to resume performance despite the delay. Pending resumption, the other party may suspend its own performance.

6.4 Notwithstanding the above, if any act or matter relied upon by the Supplier for the purposes of Clause 6.1 above shall continue for more than 60 (sixty) days the Buyer shall be entitled to terminate the Contract with immediate effect.

7.0 NON-CONFORMITY

7.1 Goods which do not fully conform to any warranty given by the Supplier as set out in these Terms or the Contract or which have not been manufactured in accordance with the provisions as set out in these Terms or the Contract or in any other respect do not conform to the Buyer's requirements under the Contract shall be considered non-conforming. Goods shall also be considered to be non-conforming if not accompanied by the documentation agreed between the parties.

7.2 If the Goods delivered are non-conforming, the Buyer may elect at its discretion, without prejudice to any other right or remedy, to claim either damages and/or a proportional reduction in the purchase price. In the event of a material non-conformity, the Buyer shall additionally be entitled to cancel the Order (in part or in full), and/or demand either a replacement delivery or make replacement purchases at the Supplier's cost against the return of the Goods delivered (in part or in full) and/or reject the Goods or any part of these.

7.3 The Supplier expressly accepts that if the Buyer has already used the Goods at the time when any such



non-conformity is ascertained, the Supplier shall, furthermore, be liable for such costs and losses as may be incurred and sustained as a result of a possible recall of Buyer's products and the destruction or re-packaging thereof and for any possible damage to the products caused by the non-conforming Goods.

- 7.4 If the Buyer exercises its right of rejection, the Buyer shall be entitled to require the Supplier (at the Supplier's cost) to remove any Goods rejected. As soon as the Buyer shall have given notice thereof, the Supplier shall be fully liable for such Goods and in particular shall be responsible for any storage, disposal, or transportation costs. In the event that the Supplier has received payment for any rejected Goods, the Supplier shall reimburse the Buyer in full without set-off or any other right to make a deduction.
- 7.5 The Supplier is aware that the Buyer does not upon receipt carry out an inspection of the quality and quantity of the Goods, and that the Supplier is obliged to thoroughly check the quality and quantity of the Goods to be delivered prior to dispatch. The Buyer will upon receipt of the Goods check the packaging of the Goods for transport damages. The issuing of the Buyer's official receipt or the signature of the Supplier's advice and/or packing note shall not constitute acceptance of the Goods nor constitute the waiver by the Buyer of any of its rights or obligations of the Supplier under these Terms or the Contract or otherwise implied by law.
- 7.6 The Buyer may complain of any non-conformity in the Goods at any time after delivery of the Goods, even on the basis of the Supplier's certificates of analysis. All complaints concerning non-conformity shall, however, be submitted within a reasonable time of such non-conformity having been established definitively by the Buyer.
- 7.7 Subject to compliance with the Supplier's instructions for the storage of the Goods, any non-conformity is regarded as having been present at the time of delivery of the Goods, unless otherwise proven by the Supplier.
- 7.8 Unless otherwise agreed in writing between the Buyer and the Supplier, the Supplier shall be responsible for complying with any legislation or regulations for both the export of the Goods from its country and the import of the Goods into the country of destination and for the payment of any duties thereon.

8.0 PRODUCT LIABILITY

- 8.1 The Supplier shall be liable for product liability to the extent that it is shown that the defect can be attributed to the Goods or Supplier's instructions. The Supplier shall indemnify and keep the Buyer indemnified from any product liability, which the Buyer may incur in connection with the Buyer's use of the Goods.
- 8.2 In the event of legal proceedings being instituted against the Buyer, the Supplier shall be obliged to

accept an action being brought against it by the Buyer before the same court of law, under the application of the rules of law applicable to the Buyer.

- 8.3 The Supplier shall be obliged to take out product and public liability insurance including cover for ingredients and components with a cover sum of no less than EUR 10,000,000 per annum for injury and damage to property. The insurance shall be effected with a reputable insurance company. The Supplier shall provide evidence that such insurance cover is in place as and when requested by the Buyer. The Supplier's liability to pay damages shall not be limited to the cover sum of the insurance.
- 8.4 The insurance referred to in Clause 8.3 above shall cover worldwide.

9.0 INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any discoveries, inventions, improvements, processes, designs, drawings, documentation and other materials ("Items") controlled by a party prior to the effective date or which was generated by a party independently of the Contract shall remain the sole and exclusive property of that party.
- 9.2 The Items produced by or for or on behalf of the Supplier solely for the purposes of the Supplier providing the Goods to the Buyer shall be the exclusive property of the Buyer. Furthermore, the Supplier shall treat (and shall ensure that all Supplier employees, agents and sub-contractors treat) all such Items as confidential information of the Buyer. Any and all intellectual property rights, including copyright, in all such Items shall be owned exclusively by the Buyer and the Supplier will provide the Buyer with all information, documentation and materials, which the Buyer may reasonably request for the purpose of allowing the Buyer to fully protect and exercise its proprietary rights in those Items.
- 9.3 The Supplier hereby irrevocably and unconditionally assigns to the Buyer its whole right, title and interest, in and to all intellectual property rights present and future in any Items which is the exclusive property of the Buyer according to clause 9.2 above. The Supplier shall at the Buyer's request and expense do, procure and execute all necessary acts, deeds, documents and things for effectively vesting such rights in the Buyer and shall, at the Buyer's request and expense, provide the Buyer with all reasonable assistance required to vest the same in the Buyer in any part of the world.
- 9.4 The Supplier warrants that none of the Goods sold hereunder nor any part or component hereof infringe any patent, trade mark, registered design, unregistered design right, copyright or other intellectual property right owned or controlled by any other company, corporation, firm or person. The Supplier accordingly agrees that it will hold the Buyer and the Buyer's customers for such Goods free and harmless from and wholly indemnified against any damage, loss, claim, cost, charge, award, judgement or expense arising out of, or incurred by reason of, any



actual or alleged infringement or violation of any such intellectual property right.

- 9.5 The Supplier acknowledges that all trademarks and trade names of the Buyer or its Associated Companies are the exclusive property of or licensed to the Buyer or its Associated Companies whether they are registered or not.

10.0 INDEMNIFICATION

- 10.1 The Supplier undertakes and agrees to indemnify the Buyer from and against all claims, damages, costs, losses and liabilities incurred by or awarded against or paid by the Buyer as a result of or in connection with any breach by the Supplier, its employees, agents or sub-contractors of any provisions of the Contract including these Terms or any act or omission of the Supplier, its employees, agents or sub-contractors.

11.0 PRICE

- 11.1 The prices for the Goods shall be as stipulated in the Contract. Unless otherwise agreed in writing, the price shall be inclusive of all charges for delivery, carriage, packing, packaging and duties, exclusive of VAT.
- 11.2 Introduction of a new currency in the country where the parties or either of them has its registered office shall not affect the parties' rights and obligations under the Contract. If the currency of the Contract is replaced by a new currency, all amounts due under the Contract shall automatically be converted to the equivalent amount in the new currency.
- 11.3 No variation of the price shall be accepted without the prior written consent of the Buyer.

12.0 PAYMENT

- 12.1 The terms of payment are set out in the Contract. Payment shall be effected by the Buyer where not prevented by legislative restrictions, at the place of payment indicated by the Supplier, provided that such place of payment is situated in the country in which the Supplier is domiciled.
- 12.2 The payment of invoices issued by the Supplier shall not be tantamount to the Buyer's acceptance of the price stated in such invoices, nor of the quality or quantity of the Goods delivered.
- 12.3 The Buyer shall be entitled to set off any liability of the Buyer to the Supplier against any liability of the Supplier to the Buyer (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by the Buyer of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Buyer under the Contract or these Terms or otherwise.

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13.0 CONFIDENTIALITY

- 13.1 Each party shall keep confidential all information (written or oral) concerning the business and affairs of the other party and any specifications, drawings, diagrams, patterns or other materials that it shall have obtained or received or created as a result of the discussions leading up to or the entering into or the performance of the Contract, shall only use such information in the proper performance of the Contract and shall not, without the other party's written consent, disclose such information in whole or in part to any other person save those of its employees, sub-contractors and agents involved in the implementation of the Contract and who have a need to know the same, and shall ensure that all such persons comply with the obligations in this Clause 13.1.
- 13.2 The obligations in Clause 13.1 shall not apply to information that is already in the public domain other than as a result of a breach of Clause 13.1.

14.0 PUBLICITY

- 14.1 Neither party shall without the prior written consent of the other advertise or publicly announce the subject matter of these Terms and/or the Contract. The Supplier shall not use Buyer's name, Buyer's trademarks, any information, photograph or other material relating to the Goods/Services or the premises in any homepages, marketing or publicity material without the prior written consent of the Buyer.

15.0 SERVICES

- 15.1 If any Services are to be performed as part of the Contract, the Supplier undertakes that the Services will be carried out with all reasonable care and skill, and be of sound workmanship to the standard stipulated by the Buyer in the Contract. No work shall commence on the site before obtaining the Buyer's consent. The Supplier is deemed to have understood the nature and extent of the Services to be provided. No work shall be covered or hidden until approved by the Buyer. If the Services are not carried out by the date specified in the Contract, or any later date agreed by the Buyer, the Buyer may, without prejudice to any other of its rights, procure the Services to be carried out at the risk and expense of the Supplier.
- 15.2 In relation to the Services the Supplier shall:
- i ensure that the Services are performed so as to comply with all applicable statutes and regulations relating to the provision of the Services including (without limitation) all relevant guidelines and relevant industry standards in force during the Contract;



- ii ensure that all of its employees, agents and sub-contractors are suitably trained to provide the Services and remove any of its employees and sub-contractors from the site and/or the provision of the Services (or relevant part thereof) who are reasonably objected to by the Buyer;
- iii. comply with and ensure that its employees, agents and sub-contractors whilst on any of the Buyer's premises comply with all the Buyer's health & safety, security, and other procedures applicable on the site, all reasonable instructions issued by the Buyer and all the Buyer's applicable procedures relating to access to buildings including the carrying, display and return of passes;
- iv provide and ensure that its employees, agents and sub-contractors provide all reasonable assistance to the Buyer in connection with any health and safety or food safety related inspections or other inspections carried out at the site by the Buyer or by third parties;
- v. not use any equipment, chemical or material in the course of providing the Services that the Buyer objects to on the grounds that the use of such equipment, chemical or material creates a risk to health and safety or food safety or any other risk;
- vi. immediately stop using any equipment, chemical or material in the course of providing the Services that the Buyer objects to on the grounds that the use of such equipment, chemical or material creates a risk to health and safety or food safety or any other risk;
- vii. provide the Buyer with such management information and reports and any other information, which the Buyer may reasonably request from time to time regarding the Services;
- viii. maintain up-to-date personnel records on the Supplier's Staff engaged in or assigned to the provision of all or part of the Services and provide the Buyer (or any Replacement Supplier, (as directed by the Buyer) with any information the Buyer may reasonably request relating to any such person within 7 days of any such request. The Supplier shall ensure that at all times it has the right to provide such information under Data Protection legislation; and
- ix. notify the Buyer immediately if it becomes aware of any circumstance, which may adversely affect the ability of the Supplier to provide the Services in accordance with these Terms and/or the Contract;
- x. at any time allow the Buyer's representatives to inspect and observe work being performed by the Supplier Staff and the Supplier's

agents and sub-contractors at the Buyer's premises and the Supplier's own premises.

Such inspections and observation shall occur during normal working hours and during other hours that are reasonable under the circumstances. The Buyer shall co-ordinate with the Supplier reasonably in advance. The Buyer shall conduct such inspections so as to avoid any undue disruption to work in progress;

- xi comply with any independent audit of the Services required by the Buyer in which event the Buyer shall appoint the auditor and shall pay the auditor's costs; and
- xii. maintain full and accurate records and accounts as set out in the Contract relating to the provision of the Services. The Supplier shall retain such records and accounts for the duration of the Contract and for a minimum of five years following its expiry or termination. The Supplier shall permit the Buyer and the Buyer's internal and external auditors to inspect all such records and accounts of the Supplier relating to the Services to enable the Buyer to comply with the Buyer's internal and external audit requirements. The Buyer's rights of audit of records and accounts shall remain in force for a period of five years following the completion, expiry or termination of the Contract.

15.3 The Buyer reserves the right to exclude any person from its premises for reasons of breach of the procedures referred to in Clause 15.2 iii above.

15.4 If any of the Services do not conform to the Contract on any grounds at all including without limitation, by reason of standard of workmanship or performance or failing to correspond to the Specifications, the Buyer shall be entitled at its discretion, without prejudice to any other right or remedy, to require the Supplier to perform the Services so that they conform to the Contract, or to carry out or have carried out at the Supplier's expense such work as is necessary to conform the Services to the Contract.

16.0 PACKAGING DESIGN AND TOOLS

16.1 Any design requirements of the Buyer are stipulated in the Contract.

16.2 Prior to production of packaging the design shall be approved in writing by the Buyer. Any change or adjustment to the design shall be submitted to and approved in writing by the Buyer prior to production.

16.3 All tools, plates and other materials delivered by the Buyer to the Supplier are and shall remain the Buyer's property and shall only be used by the Supplier for the purpose of its performance of the Contract. If and when requested, all such materials shall forthwith be returned in good condition to the Buyer free of charge. The materials shall at all times be well main-



tained and insured at their full replacement value by the Supplier at the Supplier's cost.

16.4 The Buyer may, if and to the extent agreed between the parties in writing in the Contract, pay some or all costs connected with the purchase of tools necessary for the manufacture of the packaging. Notwithstanding such agreement all costs related to the renewal, replacement and repair of such tools shall be paid by the Supplier. If the Buyer should pay any sum to the Supplier as payment, in part or in whole, of the tools, the property in such tools shall pass to the Buyer. The Supplier shall return such tools in good condition to the Buyer without consideration upon completion and/or termination of the Contract.

16.5 The Supplier acknowledges and agrees that the Buyer is the sole and exclusive owner (or licensee as the case may be) of all intellectual property rights and any other rights vested in tools, plates and other materials, including, but not limited to, clichés, drawings, prints, designs etc., (the "Materials") and the Supplier hereby irrevocably and unconditionally assigns to the Buyer its whole right, title and interest, present and future in and to such intellectual property rights and any other rights vested in any such Materials. The Buyer shall thus without any obligation to make payments to the Supplier be entitled at its discretion to act as the owner of all such rights and to exploit all the Materials. If and when requested by the Buyer, all the Materials shall forthwith be delivered to the Buyer free of charge.

17.0 TERM AND TERMINATION

17.1 These Terms shall be applicable to all Contracts between the parties always provided that either party may terminate the application of these Terms by giving no less than three months' advance notice to terminate and such termination shall take effect at the end of the third month. Such termination shall not affect any Contract entered into prior to the date of termination.

17.2 At least 6 months before the expiry of any Contract or following notice of early termination of any such Contract or following notice of termination of these Terms pursuant to Clause 8.1 above whichever is the earlier the Supplier shall not without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed) make, propose or permit any changes to the terms and conditions of employment of any employees performing all or part of the Services or increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier's Staff or replace any of the Supplier's Staff or deploy any other person to perform the Services (or the relevant part) or increase the number of employees performing all or part of the Services or assign additional employees to provide the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of Supplier Staff.

17.3 In the event of the Supplier's repeated and/or material breach of any of its obligations under the Con

tract, or in the event of a change in the ownership or control of the Supplier or if the Supplier makes or offers to make any arrangement with its creditors, or becomes insolvent, or has a receiver appointed of its business, or is compulsorily or voluntarily wound up, the Buyer shall be entitled at its discretion, and without prejudice to any other remedy, to suspend the performance of or to terminate the Contract and in the event of termination to keep or take possession of any Goods or of any items belonging to the Buyer and to enter any premises of the Supplier for that purpose.

17.4 The above rights of termination of the Contract are without prejudice to any other rights of termination available to the Buyer under the Contract or the law.

17.5 These Terms shall continue in full force and effect notwithstanding any termination or completion of the Contract.

18.0 MISCELLANEOUS

18.1 Severability: If any provision of these Terms and/or the Contract is or shall become invalid or unenforceable in whole or in part, the other provisions of these Terms and the Contract shall remain fully valid and enforceable.

18.2 Applicable for the UK: A legal entity or person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act ") to enforce any term of the Contract. Any right or remedy of a third party, which exists or is available apart from the Act is not affected.

18.3 Amendments: The validity of amendments and additions to these Terms and/or the Contract shall be contingent upon their being made in writing and duly signed by the parties.

18.4 Waiver: No waiver by either party of any breach of any of these Terms or other provisions of the Contract shall constitute a waiver of any other prior or subsequent breach, and neither party shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the other party.

19.0 CHANGE IN CONTROL/SUBCONTRACTORS

19.1 In the event that assets and debts in the Buyer are transferred to a third party, the Supplier accepts that the third party shall hereafter be a party to the Contract. A change or transfer in the ownership or control of the Buyer shall not be deemed a breach of the Buyer's obligations hereunder.

19.2 Assignment and Subcontractors: The Supplier shall not be entitled to assign or subcontract any performance of its obligations under the Contract without the Buyer's prior written consent. If the Buyer consents to the sub-contracting or assignment by the Supplier of its obligations the Supplier shall remain responsible for the performance of the Contract.



Further, the Supplier shall procure that any subcontractor shall comply with these Terms and the Supplier's obligations under the Contract, as if it were a party hereto.

- 19.3 The Buyer may assign any of its rights and obligations under the Contract without the consent of the Supplier.

20.0 RELATIONSHIP OF THE PARTIES

- 20.1 The relationship of the parties is that of independent contracting parties. Nothing in these Terms and/or the Contract shall be construed as creating a partnership, agency or joint venture between the parties.

- 20.2 The Supplier shall remain responsible for the payment of all salaries, wages and other employee benefits and employer's contributions in relation to the Supplier Staff and for all payments to its agents and sub-contractors. Nothing in these Terms and/or the Contract or the fact that Supplier Staff, or the Supplier's agents and sub-contractors are located on the Buyer's premises shall be construed to establish any contract of employment or other contract between the Buyer and any of the Supplier Staff or the Supplier's agents or sub-contractors.

- 20.3 The parties agree that the activities concerned under this Contract, including these Terms are wholly or mainly for the supply of goods from the Supplier for the Buyer's use. If any Services are to be performed as part of the Contract those Services are connected with a single specific event or task of short term duration.

- 20.4 If any Services are to be performed as part of the Contract and any provision of law has the effect of transferring to the Supplier, the contracts of employment of any employees of the Buyer or its sub-contractors during or on the commencement of the Contract and/or these Terms (as determined by the Buyer), the Supplier shall perform and discharge all of its obligations under any such law, including co-operating with the Buyer to ensure that any requirement to inform and consult employees and/or employee representatives is fulfilled and the Supplier shall indemnify the Buyer in full against any and all Losses in any way directly or indirectly connected with or arising from or relating to any actions proceedings claims demands orders in any way directly or indirectly connected with or arising from or relating to:

- i. any failure by the Supplier to comply with any such obligations; and
- ii. any act or omission of the Supplier or any other matter, event or circumstances in respect of any such employee on or after any such transfer.

- 20.5 Nothing in the Contract shall have the effect of transferring to the Buyer, nor is it intended that any provision of law shall have the effect of transferring to the Buyer, the contracts of employment of any

employees of the Supplier or its agents or sub-contractors.

- 20.6 Notwithstanding Clauses 20.3 and 20.5 above if any provision of law has the effect of transferring to the Buyer (or a Replacement Supplier), the contracts of employment of any employees of the Supplier or its agents or sub-contractors during or on the termination of the Contract and/or these Terms (as determined by the Buyer), the Supplier shall perform and discharge all of its obligations under any such law, including co-operating with the Buyer or a Replacement Supplier (as directed by the Buyer) to ensure that any requirement to inform and consult employees and/or employee representatives is fulfilled (the "**Obligations**").

- 20.7 If as a result of the Contract and/or the application of any law, an employee, former employee or other person working for the Supplier or its agents or sub-contractors shall become or otherwise be deemed to be or shall claim to have become an employee of the Buyer or a Replacement Supplier:

- i. the Buyer or Replacement Supplier may (as soon as practicable after becoming aware of such fact) terminate such employment immediately ("**Employment Termination**");

the Supplier shall indemnify the Buyer and/or a Replacement Supplier (as directed by the Buyer) in full against any and all Losses in any way directly or indirectly connected with or arising from or relating to any actions proceedings claims demands orders in any way directly or indirectly connected with or arising from or relating to:

- (a) any failure by the Supplier to comply with the Obligations;
- (b) any act or omission by the Supplier or any other matter, event or circumstances in respect of any such employee, former employee or other person working for the Supplier or its agents or sub-contractors;
- (c) any Employment Termination; and
- (d) any transfer of liabilities and/or duties in relation to any such employee, former employee or other person working for the Supplier or its agents or sub-contractors to the Buyer or a Replacement Supplier;

(together the above to be known as the "**Claims**")

- ii. the Buyer and/or a Replacement Supplier may settle or compromise any Claims and may require the Supplier to indemnify it and/or them (as directed by the Buyer) against any and all Losses arising out of or in connection with so doing;

- iii. the Buyer and/or a Replacement Supplier may defend any Claims and may require the Supplier to indemnify it and/or them (as directed by the Buyer) in full against any and all Losses arising out of or in connection with so doing;
- iv. the Supplier shall take such action and provide such assistance, information and/or documentation in connection with any Claims as the Buyer or any Replacement Supplier may from time to time reasonably request (as directed by the Buyer);
- v. the Supplier shall provide the Buyer, Replacement Supplier and/or their professional advisers and experts with access from time to time to such members of staff as they may require to assist the Buyer or a Replacement Supplier (as directed by the Buyer) with the preparation of its and/or their cases in relation to any Claims, including permitting such employees as the Buyer or its professional advisers may reasonably request to meet with the Buyer, Replacement Supplier and/or their legal advisers in normal working hours to prepare witness statements for hearing, attend any meetings and/or to attend any court hearing or trial in connection with any Claims;

20.8 The Supplier shall indemnify the Buyer and/or a Replacement Supplier (as directed by the Buyer) in full against any and all Losses arising directly or indirectly out of or in connection with or related to any act or omission by the Supplier or any other matter, event of circumstances in respect of any other employee, former employee or other person working for the Supplier or its agents or subcontractors whether before, on or after the termination of the provision of the Services (or any part thereof) by the Supplier.

21.0 GOVERNING LAW AND VENUE

- 21.1 These Terms and the Contract shall be governed by and interpreted in accordance with the laws in Denmark and the parties hereby submit themselves to the jurisdiction of the courts in Denmark. Legal proceedings shall to the extent permissible be instigated at the Maritime and Commercial High Court of Copenhagen (Sø- og Handelsretten).
- 21.2 Notwithstanding the above, in the event that the Supplier is domiciled outside Denmark and has entered into a Contract with a Buyer incorporated outside Denmark these Terms and the Contract shall be governed by and interpreted in accordance with the laws in force in the country of incorporation of the Buyer and the parties submit themselves to the jurisdiction of the courts in such country.