



K.T.C. (Edibles) Limited

TERMS & CONDITIONS OF SALE

These Conditions do not apply to any agreements entered into by KTC and a Buyer in writing
The Buyer's attention is drawn in particular to the provisions of s 9 and 15.3.

1. Interpretation

1.1 Definitions:

- 1 **Agreement** means the contract between KTC and the Buyer for the sale and purchase of the Goods in accordance with these Conditions and the Invoice;
- 2 **Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- 3 **Buyer** means the person who purchases the Goods from KTC;
- 4 **Buyer's Delivery Address** means the Buyer's address for delivery as set out in the Invoice;
- 5 **Code of Conduct** means KTC's code of conduct applicable to its buyers, as provided by KTC to the Buyer and updated as necessary from time to time;
- 6 **Commencement Date** means the date on which KTC issues a written acceptance of the Order, as specified in clause 2.3;
- 7 **Competent Authority** means any supranational, statutory national, local or municipal government body, agency, court, department, official or public or statutory person, police, or other authority in any jurisdiction having authority over the parties (or any one of them) or having responsibility for the regulation or governance of any aspect of the performance of this Agreement, including but not limited to the Freight Transport Association, the Road Haulage Association, the British International Freight Association and the UK Warehousing Association;
- 8 **Conditions** means the terms and conditions set out in this document;
- 9 **Due Date** means the due date for payment of the Price, as specified in the Invoice;
- 10 **Force Majeure Event** means any event beyond KTC's reasonable control including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors;
- 11 **FOSFA Contract No. 92** means the Refined Oils and Fats – Delivered Ex Works UK Terms as maintained by the International Federation of Oils, Seeds and Fats Association;
- 12 **Goods** means the goods (or any part of them) set out in the Invoice;
- 13 **Group** means, in relation to a party, any subsidiary or holding company of a party or any subsidiary of such holding company from time to time and **subsidiary** and **holding company** shall have the meanings set out in Section 1159 of the Companies Act 2006 as amended from time to time;
- 14 **Insolvent** means:
 - (a) the Buyer is unable to pay its debts as they fall due; or
 - (b) the Buyer (or any item of its property) becomes the subject of:
 - (i) any formal insolvency procedure;
 - (ii) any application or proposal for any formal insolvency procedure; or
 - (iii) any application, procedure or proposal overseas with similar effect or purpose;
- 15 **Invoice** means KTC's invoice in relation to the Goods;





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- 16** **KTC** means K.T.C. (Edibles) Limited (company number 01433723) whose registered office is at Victoria Mills, London Road, Wellingborough, Northamptonshire, United Kingdom, NN8 2DT, or such other KTC entity as set out on the Invoice;
- 17** **KTC's Address** means Victoria Mills, London Road, Wellingborough, Northamptonshire, United Kingdom, NN8 2DT, or such other address as set out on the Invoice;
- 18** **Order** means the Buyer's order for the Goods;
- 19** **Price** means the price paid by the Buyer for the Goods as set out in the Invoice;
- 20** **Special Terms** means any terms that are agreed between KTC and the Buyer that are set out in the Invoice and labelled as such; and
- 21** **Specification** means any specification for the Goods, including any related plans and drawings, as described in KTC's brochure or the Invoice (as applicable) or in the absence of this, as is agreed in writing by the Buyer and KTC.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of Agreement

- 2.1** These Conditions apply to this Agreement to the exclusion of any other terms that the Buyer seeks to impose or incorporate, including in the Order, or which are implied by law, trade custom, practice or course of dealing (as far as legally possible). For the avoidance of doubt, these Conditions shall apply exclusively to all Orders and Invoices unless KTC and the Buyer expressly confirm otherwise in writing.
- 2.2** The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.
- 2.3** The Order shall only be deemed to be accepted (and the Buyer hereby acknowledges and agrees that all Orders are conditional upon the availability of the Goods ordered) when KTC issues a written acceptance of the Order. KTC may issue acceptance of the Order in any manner it determines, including (without limitation) by email or by issuing an Invoice to the Buyer. Once KTC has issued a written acceptance of the Order, the Agreement shall come into existence.
- 2.4** The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions or any Special Terms.
- 2.5** Any samples, drawings, descriptive matter or advertising produced by KTC and any descriptions or illustrations contained in KTC's catalogues or brochures are produced for the sole purpose of giving an approximate indication of the Goods referred to in them. They shall not form part of the Agreement nor have any contractual force.





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- 2.6 A quotation for the Goods given by KTC shall not constitute an offer. A quotation is an illustrative estimate only and the price charged under an Invoice will be the Price.
- 2.7 Where indicated in the Invoice, FOSFA Contract No. 92 shall apply to this Agreement as set out in the Invoice.
- 2.8 In case of any conflict between the FOSFA Contract No. 92 terms and this Agreement, the Conditions of this Agreement take precedence unless specified in the Invoice.
- 2.9 The terms set out in the Invoice are incorporated into this Agreement, and to the extent that any Special Terms are included, such Special Terms shall take precedence over the other conditions of this Agreement in case of conflict.

3. Goods

- 3.1 The Goods are as described in the Specification or in the Invoice.
- 3.2 If the Buyer provides the Specification and KTC prepares the Goods in accordance with the Specification, the Buyer must ensure that:
- (a) the Specification is accurate;
 - (b) the Specification is provided to KTC within a reasonable time;
 - (c) the Goods prepared in accordance with the Specification will be fit for the purpose for which the Buyer intends to use them; and
 - (d) the Specification will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 3.3 KTC reserves the right to:
- (a) amend the Specification if required by any applicable statutory or regulatory requirement; and
 - (b) without notice, make any minor modifications to the Specification KTC thinks necessary or desirable.
- 3.4 The Buyer may return the Goods to KTC:
- (a) by prior arrangement which has been confirmed in writing;
 - (b) on payment of an agreed (as between the parties) handling charge (unless the Goods were defective when delivered); and
 - (c) where the Goods are as fit for sale on their return as they were on delivery.

4. Delivery

- 4.1 KTC shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if KTC requires the Buyer to return any packaging materials to KTC, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as KTC shall reasonably request. Returns of packaging materials shall be at KTC's expense.





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- 4.2 Subject to clause 4.11, KTC shall deliver the Goods to the Buyer's Delivery Address at any time after KTC notifies the Buyer that the Goods are ready for delivery.
- 4.3 Delivery is completed on the completion of unloading of the Goods at either:
- (a) KTC's Address (if the Buyer is collecting them or arranging carriage); or
 - (b) the Buyer's Delivery Address or an address specified by the Buyer (if KTC is arranging carriage).
- 4.4 Any dates quoted for delivery in the Order and/or Invoice are approximate only, and the time of delivery is not of the essence. KTC shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, the Buyer's failure to provide KTC with adequate delivery instructions, any other instructions that are relevant to the supply of the Goods, the Buyer's failure to comply with these Conditions, or the circumstances set out in clause 4.11.
- 4.5 If KTC fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price. KTC 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 Buyer's failure to provide KTC with adequate delivery instructions, any other instructions that are relevant to the supply of the Goods, the Buyer's failure to comply with these Conditions, or the circumstances set out in clause 4.11.
- 4.6 If the Buyer fails to accept delivery of the Goods within five Business Days of KTC notifying the Buyer that the Goods are ready for delivery, then, except where such failure or delay is caused by a Force Majeure Event or KTC's failure to comply with its obligations under the Agreement in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 12.00pm on the third Business Day after the day on which KTC notified the Buyer that the Goods were ready for delivery; and
 - (b) KTC shall store the Goods until actual delivery takes place, and be permitted to charge the Buyer for all related costs and expenses (including, but not limited to, insurance).
- 4.7 If ten Business Days after the day on which KTC notified the Buyer that the Goods were ready for delivery the Buyer has not accepted actual delivery of them, KTC may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the Price or charge the Buyer for any shortfall below the Price.
- 4.8 If the Buyer accepts delivery of the Goods after the quoted delivery time, the Buyer agrees that it has no claim against KTC for delay, including (without limitation) indirect or consequential loss or any increase in the Price.
- 4.9 If KTC delivers up to and including 10% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, KTC shall make a pro rata adjustment to the Invoice.
- 4.10 KTC may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall form a separate part of the Agreement. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment or the Agreement.
- 4.11 KTC may decline to deliver the Goods if:
- (a) KTC believes that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - (b) the Buyer's Delivery Address (or access to it) is unsuitable for KTC's vehicle or is inaccessible by KTC's vehicle.





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In the event that KTC declines to deliver the Goods due to the reasons set out above, the Buyer acknowledges and agrees that KTC shall not be in breach of this Agreement.

5. Quality

5.1 KTC warrants that the Goods shall:

- (a) conform in all material respects with the Specification (if provided); and
- (b) be free from material defects in design, material and workmanship.

5.2 KTC gives no other warranty and excludes any warranty, term or condition that would otherwise be implied as to the quality of the goods or their fitness for any purpose.

5.3 Subject to 5.4, if:

- (a) the Buyer gives notice in writing to KTC or by email to KTCTransport@mdgrp.com as soon as possible after discovering that some or all of the Goods do not comply with the warranty set out in 5.1 and/or are defective in materials or workmanship;
- (b) KTC is given a reasonable opportunity to examine such Goods; and
- (c) the Buyer (if asked to do so by KTC) returns such Goods to KTC's place of business at the Buyer's cost,

KTC shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 KTC shall not be liable for the Goods' failure to comply with the warranty set out in 5.1 if:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with 5.3;
- (b) the defect arises because the Buyer failed to follow KTC's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of KTC following any drawing, design or specification supplied by the Buyer;
- (d) the Buyer alters such Goods without the written consent of KTC;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or suboptimal storage or working conditions; or
- (f) the Goods differ from the Specification (if provided) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this 5, KTC shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in 5.1.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.

5.7 These Conditions shall apply to any replacement Goods supplied by KTC.

6. Buyer's Obligations

6.1 The Buyer undertakes to KTC that it shall:

- (a) promptly observe and comply with all applicable laws (including, but not limited to, in relation to anti-bribery, modern slavery, anti-tax evasion, and data protection laws). For the avoidance of doubt, any approval given by or on behalf of KTC pursuant to this Agreement shall not be construed as any representation, warranty or assurance





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regarding the Buyer's compliance with applicable laws, it being the sole responsibility of the Buyer to satisfy itself that that is the case;

- (b) observe and comply with the guidelines, instructions, requests, and directions of KTC from time to time in respect of this Agreement and matters relating to this Agreement,
- (c) promptly observe and comply with any and all KTC's policies and procedures, including (without limitation) the Code of Conduct;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Buyer's obligations are fulfilled in accordance with this Agreement;
- (e) meet any performance dates under this Agreement as notified to the Buyer by KTC in writing (including, without limitation, any performance dates or milestones set out in the Order and/or Invoice) and time is of the essence in relation to any of those performance dates;
- (f) promptly report to KTC any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement;
- (g) hold and maintain in force for duration of the Agreement all licences, authorisations, consents, approvals, certifications, and/or accreditations required to perform any and all of its obligations under this Agreement and/or to operate its business lawfully and legitimately;
- (h) comply with all terms and conditions which have been imposed on the parties by any Competent Authority and which are notified to the Buyer in advance and in writing and which KTC requires the Buyer to comply with including but not limited to, health and safety directions, regulations, procedures, and/or policies of KTC as issued or notified to the Buyer by KTC from time to time in advance and in writing;
- (i) not by itself, its employees, servants or agents (and shall procure that no member of its Group nor any of their agents or servants) do or say anything in any way or manner which in the reasonable opinion of KTC is prejudicial, disparaging, derogatory, or defamatory to KTC (including any of KTC's staff, directors or officers);
- (j) ensure that none of its directors or officers make any statement that is prejudicial to, defamatory of, disparaging of, or derogatory to KTC, its directors or officers; and
- (k) not by itself or as by its servants or agents hold itself out to any third party as representing or having any authority to bind KTC.

7. Title and Risk

- 7.1 The risk in the Goods shall pass to the Buyer on completion of delivery in accordance with clause 4.3.
- 7.2 The Buyer must inspect the goods on completion of delivery. If any of the Goods are damaged or not delivered, the Buyer must inform KTC by email to KTCTransport@mdgrp.com or phone via 0121 505 9200:
 - (a) in the case of a defect that is apparent on reasonable visual inspection, within 48 hours of completion of delivery; or
 - (b) in the case of a latent defect, within a reasonable time of delivery and immediately upon the latent defect having become apparent.

KTC can accept no liability for damage, destruction, breakages or shortage, unless notice is given in writing by the Buyer to KTC within the relevant time period. If the Buyer has not given notice of any defects in the Goods within the relevant time period, it shall be deemed to have accepted the Goods.





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- 7.3 The Buyer must give KTC (and any carrier) the opportunity to inspect the damaged or defective Goods (such opportunity to be notified to the Buyer and conditioned by KTC in KTC's sole discretion).
- 7.4 Title to the Goods shall not pass to the Buyer until the earlier of:
- (a) KTC receives payment in full (and in cleared funds) to a bank account nominated in writing by KTC for the Goods and any other goods that KTC has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or
 - (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 7.1.
- 7.5 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) store the Goods safely and separately from all other goods held by the Buyer so that they remain readily and easily identifiable as KTC's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in excellent condition and keep them insured against all risks for which a prudent owner would insure them for their full price from the date of delivery and hold the policy on trust for KTC;
 - (d) notify KTC immediately if it becomes subject to any of the events listed in 10.2(b) to 10.2(e); and
 - (e) give KTC such information as KTC may require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Buyer.
- 7.6 Until title to the Goods has passed to the Buyer and subject to clause 7.8, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise), unless:
- (a) KTC revokes this right in accordance with clause 7.8(a); or
 - (b) the Buyer becomes Insolvent.
- 7.7 If the Buyer resells the Goods in accordance with clause 7.6:
- (a) it does so as principal and not as KTC's agent; and
 - (b) title to the Goods shall pass from KTC to the Buyer immediately before the time at which resale by the Buyer occurs.
- 7.8 At any time before title to the Goods passes to the Buyer, KTC may:
- (a) by notice in writing, terminate the Buyer's right under 7.6 to resell the Goods or use them in the ordinary course of its business;
 - (b) enter any premises where the Goods may be stored to inspect them and/or reclaim them; and
 - (c) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 7.9 The Buyer must inform KTC in writing or by email to accounts@ktc-edibles.co.uk immediately if the Buyer becomes Insolvent.





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- 7.10 Notwithstanding KTC's retention of title under clause 7.4 and notwithstanding any other right or remedy available to KTC, if the Buyer does not pay KTC the Price by the Due Date, KTC shall have the right to take legal proceedings to recover the Price.

8. Price and Payment

- 8.1 The price of the Goods shall be the Price, or, if no price is quoted, the price set out in KTC's price list as at the date of delivery or as otherwise notified to the Buyer by KTC.
- 8.2 KTC may, by giving notice to the Buyer at any time before delivery, increase the Price to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond KTC's direct or indirect control (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give KTC adequate or accurate information or instructions.
- 8.3 The Price:
- (a) excludes amounts in respect of value added tax ("VAT"), which the Buyer shall additionally be liable to pay to KTC at the prevailing rate at the time of delivery, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs of packaging, insurance and carriage of the Goods (unless otherwise stated).
- 8.4 KTC may invoice the Buyer for the Goods any time prior to, on, or at any time after the completion of delivery.
- 8.5 The Buyer shall pay each invoice submitted by KTC (including, but not limited to, the Invoice):
- (a) within 30 days of the date of the invoice in accordance with any credit terms agreed by KTC (or immediately on the date of the invoice in the absence of any agreed credit terms) and confirmed in writing to the Buyer;
 - (b) in full (in cleared funds) to a bank account nominated in writing by KTC, and
- time for payment shall be of the essence of the Agreement.
- 8.6 If the Buyer fails to make a payment due to KTC under this Agreement by the Due Date, then, without limiting KTC's remedies under clause 10, KTC may:
- (a) suspend or discount future deliveries;
 - (b) cancel any discount offered to the Buyer;
 - (c) charge the Buyer interest at the rate set out in section 6 of The Late Payment of Commercial Debts (Interest) Act 1998 calculated on a daily basis from the date of KTC's invoice until payment of the overdue sum, whether before or after any judgment (unless a court orders otherwise);
 - (d) claim fixed sum compensation from the Buyer under s5.A of The Late Payment of Commercial Debts (Interest) Act 1998 to cover KTC's credit control overhead costs; and
 - (e) recover (under clause 8.10) the cost of taking legal action to enforce the Buyer's obligation to pay.





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- 8.7 If the Buyer has an approved credit account, KTC may at any time and at its sole discretion without notice withdraw it or reduce the Buyer's credit limit or bring forward the Due Date.
- 8.8 The Buyer does not have the right to set off any money it may claim from KTC against any amount that the Buyer may owe to KTC.
- 8.9 While the Buyer owes payment to KTC whether under this Agreement or otherwise, KTC shall retain ownership of any of the Buyer's property that is in KTC's possession.
- 8.10 The Buyer shall indemnify and hold harmless KTC against all expenses and liabilities that KTC may incur (directly or indirectly including financing costs, legal costs and the cost of instructing a debt recover agency to recover a debt due to KTC if any, on a full indemnity basis) following any breach by the Buyer of its obligations under this Agreement.
- 8.11 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Limitation of liability

- 9.1 Subject to clause 9.3, KTC's total liability to the Buyer shall not exceed the lower of £1,000,000 or the aggregate Price of all Orders made (with according Invoices) in the six (6) month period prior to the relevant claim arising.
- 9.2 Subject to clause 9.3, the restrictions on liability in this 9 apply to every liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution, breach of statutory duty or otherwise.
- 9.3 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 9.4 Subject to 9.3, the following types of loss are wholly excluded from KTC's liability under this Agreement:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill;
 - (g) indirect or consequential or special losses; and
 - (h) wasted expenditure (including, but not limited to, costs incurred by the Buyer in procuring and implementing replacements for, or alternatives to, Goods save as expressly set out in this Agreement).
- 9.5 Subject to clause 9.3, KTC shall have no liability for a claim unless the Buyer notifies it of its intention to make a claim within the Notice Period, provided that: (i) such notice is made in writing and identifies the grounds for the claim in full detail; and (ii) the Buyer reasonably responds to any requests for further information in respect of the claim. The **"Notice Period"** shall start on the Commencement Date and shall expire 36 months following that date.





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9.6 This 9 shall survive termination of the Agreement.

10. Termination

- 10.1 Without affecting any other right or remedy available to it, KTC may terminate this Agreement at any time for convenience by providing 30 days' prior written notice to the Buyer.
- 10.2 Without limiting its other rights or remedies, KTC may: (i) terminate this Agreement; or (ii) suspend provision of the Goods under the Agreement or any other contract between the Buyer and KTC, with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of the Buyer being notified in writing to do so;
 - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Buyer takes any step or action in connection with the Buyer being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (e) the Buyer's financial position deteriorates so far as to justify in KTC's opinion that the Buyer's ability to give effect to the terms of the Agreement is in jeopardy;
 - (f) the Buyer commits any act which brings, or is likely to bring, KTC into disrepute or which damages, or is likely to damage, KTC's reputation or commercial interests;
 - (g) the Buyer fails to pay any amount due under this Agreement on the Due Date; or
 - (h) KTC is of the opinion that the Buyer is about to, or is likely to, be subject to or carry out any of the events listed in clauses 10.2(b) to 10.2(g) (inclusive).
- 10.3 On termination of the Agreement for any reason the Buyer shall immediately pay to KTC all of KTC's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, KTC shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 10.4 Termination or expiry of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 10.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

11. Force Majeure

- 11.1 KTC shall not be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.





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12. Export Terms

- 12.1** Clause 12 of these Conditions applies where KTC supplies the Goods over an international border or overseas except to the extent that it is inconsistent with any written agreement between the Buyer and KTC.
- 12.2** The "Incoterms" of the International Chamber of Commerce which are in force at the time when this Agreement is made apply to exports, but the terms of this Agreement prevail to the extent that there is any inconsistency between the Incoterms and this Agreement.
- 12.3** Unless otherwise agreed in writing between the Buyer and KTC, the Goods will be delivered EXW Incoterms 2020 to KTC's Address. Where an alternative Incoterm and/or location is agreed in writing between the Buyer and KTC such Incoterm and delivery location shall apply.
- 12.4** Where KTC sends the Goods to the Buyer by a route including sea transport, KTC is under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5** The Buyer is responsible for arranging testing and inspection of the Goods at KTC's Address before shipment (unless otherwise agreed). KTC is not liable for any defect in the Goods which would be apparent on inspection unless a claim is made before shipment. KTC is not liable for any damage to the Goods during transit.

13. Cancellation

- 13.1** The Buyer may not cancel any Agreement (or any part thereof) unless agreed in writing by both parties.
- 13.2** KTC may suspend or cancel any Agreement (or any part thereof) with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer fails to pay KTC any money when due, whether under this Agreement or otherwise;
 - (b) the Buyer becomes Insolvent;
 - (c) the Buyer fails to perform, or comply with, any of its obligations under this Agreement; or
 - (d) KTC is of the opinion that the Buyer is about to, or is likely to, be subject to or carry out any of the events listed in clauses 10.2(b) to 10.2(g) (inclusive).

14. Compliance

- 14.1** Notwithstanding clause 6.1(a), the Buyer agrees that it shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
 - (b) have in place and maintain throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
 - (c) not do, or omit to do, any act that will cause or lead KTC to be in breach of any of the Relevant Requirements; and
 - (d) promptly report to KTC any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.
- 14.2** The Buyer shall:





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- (a) immediately notify KTC (in writing) if a foreign public official becomes an officer or employee of its organisation or acquires a direct or indirect interest in it (and it warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement); and
 - (b) within two months of the date of this Agreement and then annually, certify to KTC in writing signed by an officer of the Buyer, compliance with this clause 14 by it (and its Group) and all persons associated with it under clause 14.3. The Buyer shall provide any supporting evidence of compliance as KTC may reasonably request.
- 14.3 The Buyer shall ensure that any person associated with it who is performing services in connection with this Agreement does so only on the basis of a written contract, which imposes on and secures from that person terms equivalent to those imposed on the Buyer in this clause 14 ("**Relevant Terms**"). The Buyer shall be responsible for the observance and performance by these persons of the Relevant Terms, and shall be directly liable to KTC for any breach by these persons of any of the Relevant Terms.
- 14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) and section 8 of that Act respectively.
- 14.5 The Buyer shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - (b) have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and
 - (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 14.6 The Buyer represents and warrants that neither it nor any of its officers, employees or other persons associated with it:
- (a) have been convicted of any offence involving slavery and human trafficking; and
 - (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 14.7 The Buyer shall notify KTC as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Modern Slavery Act 2015 and/or KTC's anti-slavery policy (as included on KTC's website, which may be amended by KTC from time to time); or
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 14.8 KTC shall be entitled (without payment of compensation or other damages) to terminate or suspend this Agreement immediately upon written notice to the Buyer in the event of any of the following:
- (a) the Buyer or any individual entity or organisation holding any material ownership interest in the Buyer, or any officer or director of the Buyer, is determined at any time to be an individual, entity, or organisation: (i) with whom KTC or its Group is/are prohibited from dealing by any law, regulation or executive order; or (ii) that is listed in one or more databases of high risk parties maintained by a Competent Authority or applicable laws; or





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- (b) the Goods provided under this Agreement cause, or the payment for such causes KTC or its Group to be in violation of applicable laws, or violate the rules and regulations of a Competent Authority.
- 14.9 Where KTC is entitled to exercise any right under clause 14.8, then it shall not be required to make any payment to the Buyer for as long as such payment would, if made, place KTC in violation of applicable laws or violation of the rules and regulations of a government body with appropriate jurisdiction.
- 14.10 The Buyer shall during the term of this Agreement:
- (a) not engage in any activity, practice or conduct which would constitute either: (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
 - (b) establish, maintain and enforce its own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with clauses 14.10 and 14.11;
 - (c) notify KTC in writing if it becomes aware of any breach of clauses 14.10 and/or 14.11 or has reason to believe that it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Contract;
 - (d) promptly following the Commencement Date, and annually thereafter, certify to KTC in writing signed by an officer of the Buyer, compliance with clauses 14.10 and 14.11 by the Buyer and all persons referred to in clause 14.11. The Buyer shall provide such supporting evidence of compliance as KTC may reasonably request.
- 14.11 The Buyer shall ensure that any of its agents, consultants, contractors, subcontractors or other persons associated with the Buyer in connection with this Contract do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Buyer in clauses 14.10 and 14.11 ("**AFTE Relevant Terms**"). The Buyer shall be responsible for the observance and performance by such persons of the AFTE Relevant Terms, and shall be directly liable to KTC for any breach by such persons of any of the AFTE Relevant Terms.

15. General

15.1 Assignment and Other Dealings.

- (a) KTC may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of KTC.

15.2 Entire Agreement.

- (a) The Agreement constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

15.3 Variation. Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties (or their authorised representatives). Notwithstanding the





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foregoing, KTC may vary these Conditions from time to time in its sole and absolute discretion.

15.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5 Severance. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision of the Agreement is deemed deleted under this clause 15.5, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.6 Notices.

- (a) Any notice to be given under this Agreement by either party to the other shall be in writing and may be served personally by hand or by post to the address (or if by email, to the email address) specified in the Invoice.
- (b) Any such notice shall be deemed to have been served:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if posted, at the expiration of 48 hours after the envelope containing the same shall have been put in the post; or
 - (iii) if sent by email, on receipt of an automated delivery receipt or confirmation of receipt from the relevant server if before 5pm on a Business Day.
- (c) If any such notice arrives on any day which is not a Business Day, it shall be deemed to have been delivered on the next following Business Day.
- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.7 Third party rights. Save for KTC's Group, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

15.8 Governing law. The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England.

15.9 Jurisdiction. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

15.10 Obligations. If the Buyer is more than one person, each person has joint and several obligations under this Agreement.

