

Morning Foods – Terms and Conditions for the Purchase of Goods and Services

In these Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Business Day”	any day which is not a Saturday or Sunday or public holiday in England
“Change of Control”	in relation to an undertaking, a change in the ability to direct the affairs of that undertaking, whether by virtue of ownership of shares, contract or otherwise;
“the Company”	Morning Foods or the subsidiary company placing the Order with the Supplier or, if different, the company receiving delivery of the Goods and/or Services (either directly or through a nominated third party);
“Conditions”	these terms and conditions and any special terms agreed in writing by the Company and the Supplier;
“the Contract”	the Order and the Supplier’s acceptance of the Order; “Goods” any goods agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them);
“Intellectual Property Rights”	without limitation, copyrights (including for the avoidance of doubt rights in computer software and typography rights), patents, trademarks, domain names, rights in designs, databases, operating systems and specifications (both registered and unregistered) and any applications to register any of the foregoing, rights in inventions (whether patentable or not), know-how, trade secrets and other confidential information and all corresponding rights of a similar nature anywhere in the world;
“Order”	the Company’s written instruction to supply the Goods and/or Services, incorporating these Conditions;
“Project Materials”	all materials developed, written, or prepared by the Supplier, its employees, agents, or sub-contractors in relation to the Services (whether individually, collectively, or jointly with the Company);
“Project Plan”	the timetable for performing the Services specified in the Order or otherwise agreed in writing by the Company and the Supplier;
“Services”	any services agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them);
“Service Levels”	the service levels for the Services, if any, specified in the Order or otherwise agreed in writing between the Company and the Supplier;
“Specification”	the specification for the Goods and/or Services specified in the Order or otherwise agreed in writing between the Company and the Supplier; and
“Supplier”	the person, firm or company who accepts the Company’s Order.

In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced.

In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires. The headings will not affect the construction of these Conditions.

APPLICATION OF TERMS

1. These Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
2. Each Order for Goods and/or Services by the Company from the Supplier shall be deemed to be an offer by the Company to purchase Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer. The Company's offer to purchase Goods and/or Services shall lapse if the offer has not been accepted by the Supplier within 7 days of the Company making the offer.
3. No terms or conditions endorsed upon, delivered with, or contained in, the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
4. These Conditions apply to all the Company's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company or a person who has delegated authority from the Company's Board of directors.

QUALITY OF GOODS AND/OR SERVICES

5. In relation to the Goods, the Supplier warrants, represents and undertakes that the Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and any Specification and/or patterns supplied or advised by the Company to the Supplier, or applied by the Supplier to the Goods, and that the Goods shall comply with any and all regulations, regulatory, statutory, legal and other such requirements applicable to the Goods including without limitation as to food and feed safety and/or, in the case of machinery, CE / UKCE Marking.
6. In relation to the Services, the Supplier warrants, represents and undertakes that the Services shall be performed in accordance with the Contract and in a timely manner bearing in mind the nature of the Services and the Company's requirements;
 - a. in compliance with any and all regulations, regulatory, statutory, legal and other such requirements applicable to the Services; and
 - b. in compliance with all security, health and safety and other policies, regulations, rules, codes of practice and guidelines that apply to the

Company's premises at which any Services are to be provided, copies of which shall be provided by the Company on request.

7. The Supplier shall demonstrate on demand the conformity of the Goods and/or Services to the requirements of Condition 3.1 and/or Condition 3.2 as appropriate and the conformity of the Supplier and its processes to any legal, regulatory or statutory requirement.
8. The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable statute from time to time.
9. If the Goods being supplied are either raw materials or packaging materials, the Supplier warrants that it is a registered member of the Supplier Ethical Data Exchange Organisation ("SEDEX") (or other ethical standards certification scheme as may be approved by the Company in writing) and will maintain such membership on an ongoing basis whilst supplying the Company. The Supplier further warrants that it will adhere to the conditions of the ETI base code, and to the Company's Code of Business Practice and Supplier Guiding Principles (available at www.morningfoods.com).
10. If the Goods being supplied contain any material derived from palm oil, the Supplier hereby warrants that it is a registered member of the Roundtable on Sustainable Palm Oil (RSPO) and will only supply certified sustainable palm oil under a Segregated or Identity Preserved supply chain model as defined by the RSPO.
11. If the Goods being supplied contain any material derived from cocoa, the supplier hereby warrants that it will maintain certification to the Rainforest Alliance supply chain requirements, and that all goods supplied which contain cocoa are supplied as certified under this scheme.

INDEMNITY

12. The Supplier shall indemnify and hold harmless and keep the Company indemnified in full on demand against all direct, indirect, or consequential liability, loss, damages, injury, costs, and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company and all Morning Foods Group Companies as a result of or in connection with:
 - a. defective workmanship, quality or materials;
 - b. infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Goods and/or Services;
 - c. any claim made against any Morning Foods Group Company in respect of any liability, loss, damage, injury, cost or expense sustained by that Morning Foods Group Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services; or
 - d. any loss or damage to property of the Company to the extent that such loss or damage was caused by, relates to, or arises from the Goods and/or Services and/or the negligence of the Supplier or its employees, agents, or sub-contractors.

DELIVERY AND TIME FOR PERFORMANCE

13. Time for delivery of the Goods and/or performance of the Services shall be of the essence.
14. If the whole or any part of the Goods and/or Services are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
 - a. cancel the Contract in whole or in part;
 - b. refuse to accept any subsequent delivery of the Goods and/or Services which the Supplier attempts to make;
 - c. recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another supplier; and
 - d. claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods and/or Services on the due date.

PRICE

15. The price of the Goods and/or Services shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
16. No variation in the price nor extra charges will be accepted by the Company.
17. The Company shall be entitled to any discount for prompt payment or volume of orders customarily granted by the Supplier to any other customer.

PAYMENT

18. For Services, the Supplier shall be entitled to invoice the Company for the price at the intervals specified in the Order or otherwise agreed in writing between the Company and the Supplier.
19. The Company shall pay or procure the payment of all invoices within no more than sixty (60) days of the receipt of the invoice, provided that, if any sums are due to the Company from the Supplier, then the Company shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from the Company under or in relation to this or any other Contract.
20. If the Company is required, pursuant to any applicable present or future law, rule, or regulation of any competent governmental or other administrative body, to make any withholding in respect of tax or otherwise from any amount or amounts payable to the Supplier pursuant to the Contract, the Company shall pay any amounts net of such withholding.
21. Unless otherwise agreed, the price of any Services shall include all out-of-pocket expenses which may be incurred by the Supplier, including, without limitation, travel, and subsistence expenses. If the Company agrees to reimburse expenses incurred by the Supplier, such reimbursement shall be limited to expenses necessarily incurred by the Supplier's personnel in performing the Services and only amounts approved by the Company in advance shall be reimbursed.

INSURANCE

- 22.** For the duration of the Contract and for a period of 24 Months thereafter the Supplier shall maintain the following insurance policies with a reputable insurer and shall provide a copy of the insurance policies and proof of payment of the current premium to the Company on request:
- 23.** product liability insurance of not less than £5,000,000 per occurrence and aggregated in the period of insurance;
- 24.** employer's liability insurance of not less than £10,000,000 per occurrence; and
- 25.** public liability insurance of not less than £5,000,000 per occurrence; and
- 26.** professional indemnity insurance of not less than £5,000,000 per occurrence and aggregated in the period of insurance.

CONFIDENTIALITY

- 27.** The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- 28.** The Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the terms of these Conditions without the prior written consent of the Company.

TERMINATION

- 29.** the Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract with immediate effect if:
 - a.** the Supplier commits a breach of any of the terms and conditions of the Contract;
 - b.** any distress, execution or other process is levied upon any of the assets of the Supplier;
 - c.** the Supplier enters any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver, or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;
 - d.** the Supplier ceases or threatens to cease to carry on its business;
 - e.** the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
 - f.** there is a Change of Control of the Supplier.
- 30.** the Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all

work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss

31. The termination of the Contract, however arising, will be without prejudice to the rights of the Company accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

REMEDIES

32. Without prejudice to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Company:
 - a. to rescind the Order;
 - b. to reject the Goods and/or Services (in whole or in part) and, in the case of Goods return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned (and for costs incurred by the Company in returning those Goods) shall be paid immediately by the Supplier;
 - c. to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Supplier;
 - d. to carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract.
 - e. to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract

ASSIGNMENT

33. The Supplier shall not be entitled to assign the Contract or any part of it (including without limitation the assignment of the financial benefit pursuant to a factoring or similar arrangement) without the prior written consent of the Company

FORCE MAJEURE

34. The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

GENERAL

35. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

36. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
37. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
38. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
39. The formation, existence, construction, performance, validity, and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

ANTI-BRIBERY COMPLIANCE

40. The Supplier warrants and represents that it will:
 - a. fully comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anticorruption including but not limited to the UK Bribery Act 2010 (“Relevant Requirements”);
 - b. and maintain its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

DELIVERY

41. The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
42. The Company shall be not deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

RISK/PROPERTY

43. The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of and risk in the Goods shall pass to the Company.

DATA PROTECTION

44. In this Condition, “Personal Data” has the meaning given in the Data Protection Act 1998.
45. The Supplier warrants that to the extent it processes Personal Data on behalf of the Company:
 - a. it shall act only on instructions from the Company; and
 - b. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data; and

c. it shall not transmit such Personal Data to a country or territory outside of the EEA without the Company's prior written consent. 24.3 The Supplier shall treat Personal Data disclosed to it in the course of providing the Services as confidential information belonging to the Company.