



STAR BRANDS LIMITED

TERMS AND CONDITIONS

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

Contract: the contract between Star Brands and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Star Brands.

Delivery Location: means the location set out in the Order or if no location is specified, Star Brands warehouse located at Avon Freight Group, Unit 5, Velocity Way, Redditch B98 7FX, UK.

Force Majeure Event: means any circumstance not in Star Brand's reasonable control including:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination, or sonic boom;

(e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) collapse of buildings, fire, explosion or accident;

(g) any labour or trade dispute, strikes, industrial action or lockouts;

(h) non-performance by suppliers or subcontractors; and

(i) interruption or failure of utility service.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of Star Brand's quotation, as the case may be.

Star Brands: Star Brands Limited (registered in England and Wales with company number 04182652).

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** includes email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 Each Order shall be deemed to be a separate offer by the Customer to purchase Goods on the terms of these Conditions, which Star Brands shall be free to accept or decline at its absolute discretion. Each Order shall:
- (a) Be given via Star Brands Electronic Data Interchange platform or, via email; and
 - (b) specify the type and quantity of Goods ordered and the Goods' code numbers.
- 2.4 The Order shall only be deemed to be accepted when (i) Star Brands issues a written acceptance of the Order or (ii) Star Brands confirms that the Goods in the Order are ready for collection or delivery (whichever is earlier), at which point the Contract shall come into existence. Each accepted Order shall form a separate Contract.
- 2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by Star Brands and any descriptions or illustrations contained in Star Brands' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 A quotation for the Goods given by Star Brands shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. Delivery

- 3.1 Star Brands shall confirm the date the Goods will be delivered or ready for collection after an Order has been accepted ("**Delivery Date**").
- 3.2 If the Goods are to be collected, as specified by Star Brands, the Customer shall collect the Goods specified in each Order from the Delivery Location on the Delivery Date. If the Goods are to be delivered, Star Brands shall use reasonable endeavours to deliver the Goods on the Delivery Date.
- 3.3 Delivery is completed when Star Brands places the Order at the Customer's disposal at the Delivery Location.
- 3.4 Star Brands 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 Star Brands requires the Customer to return any packaging materials to Star Brands, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Star Brands shall reasonably request.
- 3.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Star Brands shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Star Brands with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.6 Subject to clause 3.4, if Star Brands fails to deliver the Goods, Star Brands shall refund the price of the Goods in full.
- 3.7 If the Customer fails to take delivery of the Goods within three Business Days of Star Brands notifying the Customer that the Goods are ready, then, Star Brands shall at its discretion store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.8 If ten Business Days after the day on which Star Brands notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, Star Brands may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 3.9 Star Brands may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. Quality

- 4.1 Star Brands shall ensure that the Goods are properly packed and secured in a manner to enable them to reach their destination in good condition.
- 4.2 The Goods supplied to the Customer under each Contract shall:
 - (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;

- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) comply with all applicable statutory and regulatory requirements.

4.3 Subject to clause 4.4, if:

- (a) the Customer gives notice in writing to Star Brands within a reasonable time of discovery (and no later than 5 Business Days after collection of the Goods) that some or all of the Goods do not comply with clause 4.1;
- (b) Star Brands is given a reasonable opportunity of examining such Goods if required; and
- (c) the Customer (if asked to do so by Star Brands) returns such Goods to Star Brands' place of business at the Customer's cost,

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

4.4 Star Brands shall not be liable for the Goods' failure to comply with clause 4.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.3(a);
- (b) the defect arises because the Customer failed to follow Star Brands' oral or written instructions as to the storage, commissioning, 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 wilful damage, negligence, or abnormal storage or working conditions; or
- (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.5 Except as provided in this clause 4, Star Brands shall have no liability to the Customer in respect of the Goods' failure to comply clause 4.1.

4.6 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 Contract.

4.7 These Conditions shall apply to any replacement Goods supplied by Star Brands.

5. Title and risk

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Star Brands receives payment in full (in cash or cleared funds) for the Goods; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Star Brands' property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Star Brands immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
- (e) give Star Brands such information as Star Brands may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

5.4 Subject to clause 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Star Brands receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Star Brand's agent; and
- (b) title to the Goods shall pass from Star Brands to the Customer immediately before the time at which resale by the Customer occurs.

5.5 At any time before title to the Goods passes to the Customer, Star Brands may:

- (a) by notice in writing, terminate the Customer's right under clause 5.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. Price and payment

6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Star Brands' published price list in force as at the date of delivery.

- 6.2 Unless agreed otherwise by the parties, the price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Star Brands at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

6.3 Star Brands may invoice the Customer for the Goods on or at any time after the completion of delivery.

6.4 The Customer shall pay each invoice submitted by Star Brands:

- (a) within 30 days of the date of the invoice [or in accordance with any credit terms agreed by Star Brands and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Star Brand, and

time for payment shall be of the essence of the Contract.

6.5 If the Customer fails to make a payment due to Star Brands under the Contract by the due date, then, without limiting Star Brands' remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.6 All amounts due under the Contract 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).

7. Limitation of liability

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF THIS clause 7.

7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2 Nothing in the Contract 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.

7.3 Subject to clause 7.2, Star Brands' total liability to the Customer under each Contract shall not exceed 100% of the value of the Contract.

7.4 Subject to clause 7.2, the following types of loss are wholly excluded:

- (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; and
- (g) indirect or consequential loss.

7.5 This clause 7 shall survive termination of the Contract.

8. Recall

8.1 If the Customer becomes aware of or is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it must immediately notify Star Brands in writing and attach a copy of the Recall Notice.

8.2 Unless required by law, the Customer may only undertake a recall or withdrawal of the Goods from the market with the written permission of Star Brands and in accordance with clause 8.3(a).

8.3 Star Brands may issue a notice to recall or withdraw the Goods from the market (**Voluntary Recall Notice**) if:

- (a) the supply or use of the Goods infringes, or may infringe, a third party's intellectual property rights;
- (b) the Goods are, or may be, unsafe;
- (c) the Goods are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
- (d) a defect in the Goods may cause harm to Star Brands' reputation or brand; or
- (e) any other reasonable ground.

8.4 The Customer must:

- (a) comply with any Recall Notice (at the Customer's cost) or Voluntary Recall Notice (at Star Brands' cost); and
- (b) give such assistance as Star Brands reasonably requires to recall or withdraw the Goods from the market, and comply with Star Brands' instructions about the process of implementing that recall or withdrawal.

9. Intellectual Property Rights

9.1 In relation to the Goods:

- (a) Star Brands and its licensors shall retain ownership of all Intellectual Property Rights in the Goods;
- (b) Star Brands grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during to use the Intellectual Property Rights in the Goods to resell the Goods in the ordinary course of its business.

10. Termination

10.1 Without limiting its other rights or remedies, Star Brands may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer 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 Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

10.2 Without limiting its other rights or remedies, Star Brands may suspend provision of the Goods under the Contract or any other contract between the Customer and Star Brands if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause

10.1(d), or Star Brands reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 10.3 Without limiting its other rights or remedies, Star Brands may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to Star Brands all of Star Brands' outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Star Brands shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. Force majeure

Star Brands shall not be in breach of the Contract 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. If the period of delay or non-performance continues for 4 weeks either party may terminate the Contract by giving 7 days' written notice to the other party.

12. General

12.1 Assignment and other dealings.

- (a) Star Brands 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 Contract.
- (b) The Customer 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 Contract without the prior written consent of Star Brands.

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12.3 Entire agreement.

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

12.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 Waiver.

- (a) Except as set out in clause 2.5, 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.

12.6 Severance. If any provision or part-provision of the Contract 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 Contract. If any provision of the Contract is deemed deleted under this clause 12.6 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.

12.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the addresses provided by the other party for business purposes.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second] Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) 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.

12.8 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.9 Governing law. The Contract, 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 and Wales.

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