MARS
Ireland

MARS FOODS IRELAND TERMS AND CONDITIONS OF SUPPLY

These terms and conditions of supply shall apply to all contracts for the supply of products by Mars Food Ireland Limited to its Customers or their Affiliates in accordance with orders placed by Customers or their Affiliates with Mars from time to time.

1. INTERPRETATION

1.1 In these Terms and Conditions of Supply the following terms shall have the following meanings:
"Affiliate" means in relation to Customer, any company or entity Controlling, Controlled by, or under common Control with Customer;
"Conditions" means these Terms and Conditions of Supply, comprised of clause 1 to 13, inclusive as may be amended, revised or replaced by Mars from time to time in accordance with clause 2.3;
"Contract" means a contract between Mars and Customer for the supply of Products by Mars to Customer and/or its Affiliates, where applicable, which incorporates these Conditions, together with the Order and Invoice;
"Control" means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person: (a) by holding shares, or possessing voting power, in or in relation to that or any other body corporate; or (b) by virtue of any powers conferred by the articles of association, or any other document, regulating that or any other body corporate;
"Customer" means the party who has signed a Customer Set-Up Form and to whom Mars shall supply the Products pursuant to one or more Contracts;
"Customer Set-Up Form" means the standard Mars form completed by Customer for the purposes of providing Customer details to Mars, which are recorded on Mars' financial and order processing systems;
"Delivery" means collection of the Products by Customer or its Affiliates at Mars premises in accordance with prior agreement between the parties, or delivery of the Products by Mars to the goods inward department at Customer or third party premises as agreed;
"Invoice" means an invoice in respect of the Products issued by Mars to Customer or such third-party payment-processor nominated by the Customer in advance of placing an Order and acceptable to Mars; ;
"Mars" means Mars Foods Ireland Limited, registered in Ireland, under company number 57224;
"Order" means an order made by Customer or an Affiliates for Products from time to time, setting out the detail of the Products to be supplied to Customer or its Affiliates under a Contract, delivery details, and other required information;
"Price" means the price payable for the Products, determined in accordance with clause 3.1; and
"Products" means the products sold by Mars to Customer, as specified in an Order.

1.2 The headings in these Conditions do not affect their interpretation. Reference to "a", "an" or "the" Invoice, Contract or Order means an individual Invoice, Contract or Order.

1.3 The parties hereby agree that words in an electronic form shall be deemed to be "writing" for the purposes of all applicable legislation where ""writing" is required and electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties, and the parties hereby co
sent to the receipt of communications, including but not limited to Orders and Invoices, in electronic form for the purposes of the Electronic Commerce, Act 2000.

1.4 Reference to any statute, regulation or similar shall be construed as a reference to the statute, regulation or similar as amended, consolidated, superseded or replaced.

2. SCOPE AND APPLICATION

2.1 These Conditions shall govern and be incorporated in each Contract for the supply of Products made by Mars and Customer. They shall apply in place of and prevail over any terms, whether or not in conflict or inconsistent with these Conditions, contained or referred to in any documentation submitted by Customer, or in correspondence, or elsewhere, or implied by trade custom, practice, or course of dealing, including, but not limited to, any Customer conditions of purchase, terms of business, or any other form of agreement. The Customer agrees that any terms and conditions submitted by Customer are submitted in error and are of no binding effect or application to the Contract.

2.2 Each Order placed by a Customer, or its Affiliate, constitutes a unilateral offer which Mars is not obliged to accept. Mars however will employ reasonable endeavours to fill any order placed by a Customer, or its Affiliate. A Contract shall be concluded by Mars and Customer following acceptance by Mars of an Order. Acceptance by Customer, or its Affiliate, of delivery of the Products shall be deemed to constitute unqualified acceptance of these Conditions.

2.3 These Conditions constitute the entire agreement of Mars and Customer with regard to each supply of the Products. Variation of these Conditions shall be valid only if made in writing and signed by an authorised representative of Mars. Mars may issue revised terms and conditions of supply from time to time.

2.4 For the avoidance of doubt, it is agreed that where Customer places an Order with Mars for delivery to Customer, or where Customer places an Order with Mars for delivery to its Affiliate, or an Affiliate places an Order directly with Mars for delivery to that Affiliate, in all cases subject to the provisions of clause 2.1 & 2.2, then, in each case a Contract is concluded between Customer and Mars.

3. PRICE AND PAYMENT

3.1 Invoices shall be issued by Mars following Delivery. The Price is calculated based on Mars' published price list current at the date of acceptance of the Order by Mars, which Mars may revise from time to time. All sums shall be paid in full and free from any rights of set-off and counterclaim, to the extent legally permissible.

3.2 Payment of the Price shall be due and payable on the date specified on the Invoice. Value Added Tax and any other tax or duty payable by a Customer shall be added to the Price, at the rate then applicable. Time for payment is of the essence in a Contract. Interest is payable by Customer on overdue accounts in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

3.3 Mars may, at its sole discretion and from time to time, require full, or partial payment of the Price prior to Delivery, or the provision of security for payment by Customer in a form acceptable to Mars. In addition, any extension of credit allowed to Customer may be changed or withdrawn at any time at the discretion of Mars.

3.4 Mars may in accordance with corporate financial management policies and procedures automatically block orders of Products and suspend supply to Customer in the event that Customer is overdue with payment of any Price or is in breach of this Contract, until such time as the payment is made or the breach remedied.

4. DELIVERY

4.1 Mars shall use its reasonable endeavours to comply with the delivery or despatch dates specified in the Order. Time for Delivery is not of the essence in a Contract and shall not be made so by the service of any notice.

4.2 Delivery to Customer shall be to the goods inward department at Customer's premises or the premises of the Affiliate placing the Order, unless otherwise agreed by Mars, in writing. Mars reserves the right to make an additional charge for delivery to any other premises, which shall be agreed by the parties, in writing, prior to delivery of the Products. In the absence of agreement, Mars may estimate and charge a reasonable price.

4.3 If Customer, Affiliate, or nominated third party, refuses or fails to take delivery of Products tendered in accordance with the Contract, or fails to take any action necessary on its part for Delivery and/or shipment of the Products, then, Mars may, forthwith on notice in writing to Customer, terminate the Contract for breach of condition, or at Mars' option may elect to store the Products until actual delivery whereupon Customer shall be liable for all related costs and expenses (including, but not limited to, storage and insurance).

4.4 Mars may effect delivery of the Products in one or more instalments. The Customer shall be solely responsible for unloading the Products at the point of Delivery.

4.5 Rescheduling of an Order by Customer is subject to acceptance by Mars, at its discretion.

4.6 The Customer shall meet the cost of any special packaging requested by Customer, or Affiliate, or any packaging rendered necessary by Delivery by any means other than Mars' normal means of Delivery. The Customer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

5. RISK IN PRODUCTS

5.1 Risk in and to the Products shall pass on Delivery. From the time of Delivery until title in the Products passes to Customer in accordance with Clause 6, Customer shall be responsible for insuring the Products for their full replacement value. The Customer shall use reasonable endeavours to have Mars' interest in the Products noted on the insurance policy. Until title in the Products passes to Customer Customer, shall hold the proceeds of any claim on the insurance policy on trust for Mars and shall immediately account to Mars with the proceeds.

6. TITLE IN PRODUCTS

6.1 No title in the Products shall pass from Mars to Customer until receipt by Mars in full of: (a) the Price together with any accrued interest thereon; (b) all other sums due from Customer in respect of the Contract; and (c) all sums due from Customer other than (a) or (b)

6.2 Until title in the Products has passed, Customer shall be in possession of the Products as bailee and in a fiduciary capacity for Mars and shall: (a) take proper care and take all reasonable steps to prevent any damage to, or deterioration of, the Products; (b) keep the Products free from any security, charge, lien or other encumbrance; (c) store the Products in such a way as to show clearly that they belong to Mars (such storage to be in accordance with Mars' instructions); (d) return the Products to Mars on Mars' request; (e) notify Mars immediately upon the happening of any of the events set out in Clause 12.1; and (f) give Mars such information relating to the Products as Mars may from time to time require. At all times when the Products are in Customer's possession or control Customer shall ensure that the Products do not suffer any damage or deterioration.

6.3 The Customer may, while in possession of the Products the property of Mars, sell or dispose of the Products in the normal course of business as Mars' fiduciary agent, provided that, all proceeds from such sale or disposal shall be held by Customer on trust for Mars in a separate bank account to settle any sums due to Mars. The Customer shall, at any time at the request of Mars, account to Mars in respect of the balance standing to the credit of the said account. On the occurrence of any event referred to in Clause 12, Customer's right to deal with the Products and its power of sale shall automatically cease. In these circumstances, Customer, liquidator or receiver, shall pay into a separate bank account any sums received from third parties in respect of sales to them of Products by Customer as fiduciary agent of the Company, up to the amount of any indebtedness of Customer to Mars for the sole bene fit of Mars. If payment becomes overdue (or in the occurrence of any event referred to in Clause 12) Mars or its appointed agent may give notice to Customer to enter upon any premises in the control of Customer where the Company reasonably believes the Products to be for the purpose of recovering the Products. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company. Should Customer do so, then, all monies owing by Customer to Mars shall (without prejudice to any other rights or remedy of the Company) forthwith become due and payable.

6.4 Mars may at any time revoke Customer's power of sale by notice to Customer and may give notice to Customer requiring Customer to redeliver at Customer's expense any products supplied by Mars, where Customer is in default of payment for longer than seven days or on dishonour of any bill of exchange or other negotiable instrument on presentation for payment, notwithstanding that Mars may have negotiated it and received value therefor.

6.5 Legal and beneficial title to all intellectual property rights subsisting in the Products, including, without limitation, any copyright, patents, designs, trade and service marks, belong to and shall remain vested in Mars or, where appropriate, a third party. Nothing herein shall assign or otherwise transfer title to intellectual property in the Products, or any part thereof, to Customer. The Customer shall not alter, deface, remove or make any addition to the Products, their labelling or packaging, and shall take all reasonable steps to protect Mars' intellectual property rights.

6.6 Mars reserves the right to repossess and resell any of the Products to which it has retained title. Mars' consent to Customer's possession of the Products and any right Customer may have to possession of the Products shall in any event cease upon the happening of any of the events set out in Clause 12.1.

6.7 The Customer hereby grants an irrevocable right and licence to Mars, its employees and agents, to enter Customer's premises where applicable, and shall procure the grant of a right and licence to Mars, its employees and agents to enter its Affiliate's and nominated third party's premises where Products are held, with or without vehicles, during normal business hours for the purpose of inspecting and/or repossessing Products to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of a Contract and is without prejudice to any accrued rights of Mars under a Contract, or otherwise.

6.8 Nothing in this Clause 6 shall confer any right upon Customer to return the Products. Notwithstanding the provisions of this Clause 6, Mars may: (a) bring an action against Customer for the Price of the Products, in the event of non-payment by Customer by the due date, in accordance with Clause 3.2, even though property in the Products has not yet passed to Customer; and/or (b) by notice to Customer, at any time after delivery pass property in the Products to Customer with effect from the date of the notice.

6.9 On termination of the Contract, howsoever caused, the Company's rights contained in this Clause 6 shall remain in effect.

7. WARRANTIES AND LIABILITY

7.1 Except as expressly set forth in this Contract, all warranties, terms and conditions, whether oral or written express or implied by law, custom, or otherwise, including, but not limited to, any warranties, terms and conditions of fitness for purpose, description and quality, are hereby excluded, to the maximum extent legally permissible.

7.2 Mars shall not be liable to Customer: (a) for damage to, or loss of, the Products, or any part of them, in transit (where the Products are carried by Mars or a carrier on behalf of Mars), unless Customer notifies Mars, in writing, within fourteen (14) days of receipt of the Products or the delivery date specified in the Order, whichever is the earlier; (b) for defects in the Products caused by abnormal or unsuitable conditions of storage, or use, or any act, neglect or default of Customer, an Affiliate, or of any third party; and/or (c) for other defects in the Products, unless notified to Mars, in writing, within fourteen (14) days of receipt of the Products by Customer, or if the defect would not be apparent on reasonable inspection, within thirty (30) days of receipt thereof. If liability is accepted by Mars under this Clause 7.2, then, Mars' sole obligation, responsibility and liability and Customer's sole remedy, shall, at Mars' sole discretion, be to: (a) make good any shortage of Products; (b) replace or repair any Products found to be damaged or defective; and/or (c) refund to Customer the amount paid by Customer for the Products the subject of a claim under Clause 7.2.

7.3 The Customer hereby warrants that it is acting in the course of a business and is not a consumer within the meaning of the Sale of Products and Supply of Services Act, 1980 and, without prejudice to the generality of the foregoing, the provisions of Sections 12, 13, 14 and 15 of the Sale of Products Act, 1893, as amended by the Sale of Products and Supply of Services Act, 1980 shall not apply to these Conditions and any Contract.

7.4 Subject to the provisions of Clause 7.5, the aggregate liability of Mars for all negligent acts or omissions, breaches or defaults, resulting in direct loss of or damage to Customer, shall be limited to damages, which shall not exceed the greater of ?10,000 or the amount of one hundred and twenty percent (120%) of the Price paid under the Contract for the Products the subject of a claim.

7.5 In no event shall Mars be liable to Customer for: (a) loss of profits, loss of business, loss of revenue, loss of use, cost of substitute services or facilities, loss of goodwill or anticipated savings; (b) indirect, consequential or special loss or damage; (c) any fault or failure which is due to the default of a third party; and/or (d) damages, costs and/or expenses due to third party claims; AND for the purposes of this Clause 7.5 the term 'loss' shall include a partial loss or reduction in value as well as a complete or total loss.

7.6 The Customer shall be responsible for all acts or omissions of its Affiliates and shall indemnify and hold harmless Mars from and against any and all claims, demands, legal actions, legal expenses, costs, damages, expenses and liabilities arising out of any actual or alleged misconduct, omission or negligence or other wrongful act, or breach of law by Customer or any of its Affiliates, agents or employees.

7.7 Nothing in a Contract shall be construed to give any party, other than Mars and Customer, any right to enforce any Contract, any other legal or equitable right, remedy or claim, under or in respect of a Contract, or any provision of these Conditions. The foregoing exclusion shall include, but not be limited to, any Affiliates,

7.8 The Customer and Mars expressly agrees that should any limitation or provision contained in Clause 7 be held to be invalid under any applicable statute or rule of law, then, it shall to, that extent, be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded, then, such liability shall be subject to the other limitations and provisions set out herein.

8. COMPLIANCE, LICENCES & CONSENTS

8.1 The Customer acknowledges and agrees that details of Customer's name, address. payment record and Affiliate details will be processed by and on behalf of the Mars in connection with supply of the Products.

8.2 The parties shall comply with all applicable law. If any licence, consent or authorisation is required for the acquisition, carriage, sale or export of the Products by Customer, then, Customer shall obtain same, at its own expense and if requested produce evidence thereof to Mars on demand. Failure to obtain any required licence, authorisation or consent, shall not entitle Customer to withhold or delay payment of the Price. Any additional expenses or charges incurred by Mars resulting from such failure shall be payable by Customer.

9. PRODUCT RECALL

9.1 The Customer agrees to cooperate with Mars and provide all reasonable assistance required in relation to any recall of Products and shall procure that each of its Affiliates shall cooperate with Mars and provide all such reasonable assistance as may be required by Mars.

10. HEALTH AND SAFETY AT WORK

10.1 The Customer shall ensure that the Products shall be safe and without risks to health at all times when they are being stored or moved by a person at work. Mars personnel shall be accompanied while on Customer's premises, or the premises of any Affiliate, for purposes in connection herewith. The Customer shall take all necessary precautions to ensure the health and safety of Mars' personnel whilst they are on Customer's premises, or the premises of any Affiliate.

11. FORCE MAJEURE

11.1 For the purposes of this Clause 11 "Force Majeure" shall mean an event beyond the reasonable control of Mars, including, without limitation, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, difficulty or increased expense in obtaining workers, materials or transport, or other circumstances affecting the supply of the Products (or raw materials therefore) by Mars' normal source of supply, means of manufacture, or means of Delivery. If Mars is prevented, hindered, or delayed from, or in, supplying the Products in accordance with these Conditions by a Force Majeure event, then, Mars may, at its option: (a) suspend deliveries while the Force Majeure Event continues; (b) if Mars has insufficient stocks to meet its commitments, apportion available stocks between its customers as it determines; and/or (c) terminate any Contract so affected with immediate effect by prior written notice to Customer; AND Mars shall not be liable for any loss or damage suffered by Customer as a result.

12. TERMINATION

12.1 On or at any time after the occurrence of any of the following events, Mars may: (a) stop any Products in transit; (b) suspend further deliveries to Customer; (c) exercise its rights under Clause 6; and/or (d) terminate any Contract with Customer, with immediate effect by written notice to Customer. The events are: (i) Customer being in material breach of an obligation under a Contract; (ii) Customer passing a resolution for its winding-up (otherwise than for the purpose of reconstruction or amalgamation), or a court of competent jurisdiction making an order for Customer's winding up or dissolution; (iii) the making of an administration order in relation to Customer or the appointment of an examiner, a receiver over, or an encumbrancer taking possession of or selling, an asset of Customer; and/or (iv) Customer making an arrangement or composition with its creditors generally, or making an application to a court of competent jurisdiction for protection from-its creditors generally.

12.2 Upon termination of a Contract, howsoever arising, any indebtedness of Customer to Mars shall become immediately due and payable and Mars shall be relieved of any further obligation to supply Products to Customer pursuant to that Contract.

13. GENERAL

13.1 The Customer may not assign, novate, or transfer, or purport to assign, novate, or transfer, any of its rights or obligations under a Contract, without having obtained Mars' prior written consent. Mars may assign, novate, sub-contract, or transfer, its rights and obligations under a Contract, without having obtained Customer consent.

13.2 A Contract shall enure to the benefit of and be binding upon the respective parties hereto and their respective successors, personal representatives and assigns.

13.3 A Contract sets out the entire agreement and understanding between the parties hereto replaces and supersedes all prior statements, representations (excluding fraudulent misrepresentations), agreements and understandings relating to the subject matter hereof.

13.4 If any provision of a Contract shall be held unlawful, void or unenforceable for any reason, then, such provision shall be deemed severed and shall not affect the validity and enforceability of the remaining provisions. The invalidity, illegality or unenforceability of the whole or part of a Clause shall not affect or impair the continuation in force of the remainder of these Conditions.

13.5 The failure or delay by Mars in exercising, a right or remedy provided by a Contract, or by law, shall not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by a Contract, or by law, shall prevent a further exercise of the right or remedy or the exercise of another right or remedy.

13.6 A notice under or in connection with a Contract shall be in writing and sent by post pre-paid recorded delivery, or by email or fax, to Customer at the address set out in the Order Form, and to Mars at the address set out in the Invoice. In the absence of earlier receipt, a notice shall be deemed given: (i) if sent by post, except airmail, two (2) days after the date of posting; (ii)if sent by airmail, five (5) days after the date of posting; and (iii) if sent by fax or email, on completion of transmission.

13.7 Any disputes, claims or proceedings arising out of or in any way relating to the Products, the Conditions, or a Contract, shall be governed by the laws of Ireland. The parties hereby submit to the exclusive jurisdiction of the Irish Courts for the purpose of any proceedings arising out of or in any way relating to the Products, the Conditions or a Contract.

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