

HAVELOK LIMITED
TERMS & CONDITIONS OF PURCHASE (2017 Edition)

1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

"**Company**" Havelok Limited (registered number 08109499).

"**Conditions**" the standard terms and conditions of purchase set out in this document as amended from time to time in accordance with condition 2.3.

"**Contract**" the contract between the Company and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

"**Goods**" any goods agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of the Goods).

"**Order**" The Company's written instruction to the Supplier to supply the Goods and/or to perform the Services, incorporating these Conditions.

"**Services**" any services agreed in the Contract to be purchased by the Company from the Supplier (including any part of the Services).

"**Supplier**" the person, firm or company who accepts the Company's Order.

1.2 A reference to **writing** or **written** includes emails.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall cancel and supersede any earlier version or edition of conditions of purchase of the Company.

2.2 These Conditions shall govern the Contract to the exclusion of any terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order or similar document or which are implied by trade, custom, practice or course of dealing and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.3 No variation to the Order or these Conditions shall be binding on the Company unless agreed in writing and signed by a duly authorised representative of the Company.

2.4 All of these Conditions shall apply to both the Goods and Services except where the application to one or other is specified.

3. ORDERS

3.1 Subject to Condition 3.3, only Orders issued with an Order number by the Company or confirmed in writing against agreed specifications shall be binding on the Company.

3.2 The Supplier shall be deemed to have accepted the Order on the earlier of:

- (a) the Supplier issuing written acceptance of the Order;
- (b) any act by the Supplier consistent with fulfilling the Order; or
- (c) if the Supplier has not sent notice in writing of rejection of the Order to the Company within 2 working days of receipt;

at which point and on which date the Contract shall come into existence.

3.3 The Order number and date shall be given by the Supplier on all delivery advices and notes, invoices, correspondence and packaging relating to the Order. The Company reserves the right to withhold payment where such information is not given.

4. QUALITY AND DEFECTS

4.1 Where the Goods are food products the Goods shall be safe for human consumption for the period specified in the Order or specification supplied or agreed to by the Company, or if no period has been specified or agreed, for a reasonable period to be expected for such Goods having regard to the nature of the Goods.

4.2 Notwithstanding Condition 4.1, the Supplier shall ensure that all Goods shall

- (a) be of the specified and best available design, quality, materials, ingredients and workmanship;
- (b) without fault and free from defects in design, materials and workmanship;
- (c) conform in all respects with the Order and specification supplied or agreed to by the Company and correspond with any description supplied by the Supplier;
- (d) will comply with all relevant statutes, regulations and directives applicable to the Supplier's premises, the Goods and their packaging (including, without limitation, relating to methods of production, materials and ingredients used, labelling, packaging, handling, safety, storage and transportation) from time to time in force; and
- (e) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgment.

- 4.3 The Services shall be performed to the highest standard and with the best care, skill and diligence and conform in all respects with the Order and specification supplied or agreed to by the Company and will comply with all relevant statutes, regulations and directives applicable to the Services and their performance, from time to time in force.
- 4.4 The Company's rights under these Conditions are in addition to statutory conditions or terms implied by statute or common law.
- 4.5 At any time prior to the delivery of the Goods to the Company, the Company shall have the right to inspect and test the Goods. If the Company is of the opinion that the Goods do not comply or are unlikely to comply with the Supplier's undertaking in Conditions 4.1 or 4.2, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract. The Company may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.6 The Supplier shall comply with all applicable regulations other legal requirements and specifications or other requirements issued by the Company concerning the manufacture, packaging, packing and delivery of the Goods.
- 4.7 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.8 The Goods shall be marked in accordance with the Company's instructions / specification and properly packed and secured so as to reach their destination in an undamaged and good condition.
- 4.9 Unless otherwise agreed, all deliveries of food products will be accompanied by the Suppliers Quality Control positive release, micro results, organoleptic results to verify they comply with the Company's specifications and all current legislation and will be signed by a competent individual (Technical Director, Manager or Accredited laboratory). Failure to provide these reports may render the delivery rejected or delay payment.
- 4.10 In addition to its other obligations under the Contract, in providing the Services, the Supplier shall:
- (a) co-operate with the Company in all matters relating to the Services, and comply with all reasonable instructions of the Company;

- (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (c) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (d) use best quality goods, materials, standard and techniques and ensure that all goods and materials supplied and use in the Services or transferred to the Company, will be free from defects in workmanship, installation and design;
- (e) observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises;
- (f) not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Supplier acknowledges that the Company may rely or act on the Services.

4.11 If any of the Goods or Services fail to comply with the provisions set out in this Condition 4, the Company shall be entitled to avail itself of any one or more of the remedies listed in Condition 16.

5. INDEMNITY

5.1 The Supplier shall keep the Company indemnified against all liabilities, losses, damages, injury, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional fees and expenses) awarded against, suffered or incurred or paid by the Company as a result of or in connection with:

- (a) defective Goods or Services, workmanship, quality or materials;
- (b) any infringement or alleged infringement of any intellectual property rights caused by the use, production or supply of the Goods or Services;
- (c) any claim made against the Company by a third party for death, personal injury or damage to property arising out of or in connection with, defects in the Goods, or the Services; and
- (d) any claim made against the Company by the Company's employees or agents or by any customer or third party to the extent that such claim relates to or arises from the Goods or the Services.

5.2 This Condition 5 shall survive termination of the Contract.

6. INSURANCE

The Supplier shall maintain public and product liability insurances to cover the liabilities that may arise under or in connection with the Contract, with a limit of indemnity of not less than £5,000,000 and shall use reasonable endeavours to ensure that the Company is identified as a party to be indemnified under the policy of insurance. At the request of the Company, the Supplier shall produce to the Company evidence of the insurance and of its renewal, and of the receipt for the relevant premium of each insurance.

7. DELIVERY AND PERFORMANCE

7.1 Unless otherwise agreed, the Goods shall be delivered, carriage paid, to the place of delivery specified by the Company. The Supplier shall off-load the Goods as directed by the Company. Delivery of the Goods shall be completed on the completion of the unloading of the Goods at the place of delivery specified by the Company.

7.2 The date for delivery of the Goods shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order unless a separate delivery schedule has been agreed between the Supplier and the Company.

7.3 The date or dates for performance of the Services shall be as specified in the Order or such other date or dates agreed by the Company.

7.4 Time for delivery of Goods and performance of Services shall be of the essence.

7.5 The Supplier shall invoice the Company upon, but separately from, despatch of the Goods to the Company or completion of the Services.

7.6 Notwithstanding Condition 3.4, the Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows, inter alia, number of packages, weight (where applicable) and contents and, in the case of part delivery (where this has been agreed in accordance with Condition 7.10), the outstanding balance remaining to be delivered.

7.7 Unless otherwise stipulated by the Company in the Order, deliveries of the Goods shall only be accepted by the Company in normal business hours.

7.8 If the Goods are not delivered and/or performance of the Services is not completed on the due date then, without prejudice to any other rights or remedies which it may have, the Company has one or more of the following rights:

- (a) terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;
- (c) recover from the Supplier any expenditure incurred by the Company in obtaining the Goods or the 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 or complete performance of the Services on the due date.

7.9 Unless otherwise agreed, the Company shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.

7.10 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent and where the Company agrees to accept delivery of the Goods by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Company to the remedies in Condition 7.8.

7.11 If the Goods are delivered to the Company in excess of the quantities ordered, the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

7.12 The Company shall be entitled to reject any Goods and/or to rectification of any Services which are not in accordance with the Contract or specification (including documentation required under Condition 4.9), and shall not be deemed to have accepted any Goods or Services until the Company has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any defect in the Goods or the Services has become apparent.

8. RISK AND OWNERSHIP

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

9. PRICE

9.1 The price of the Goods and/or Services shall be as stated in the Order and, unless otherwise agreed in writing by the Company, shall be exclusive of value added tax (VAT) but inclusive of all other charges, costs and/or expenses.

9.2 No variation in the price or extra charges shall be effective unless agreed in writing and signed by the Company.

9.3 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.

10. PAYMENT

10.1 Unless otherwise agreed in writing, in respect of the Goods, the Supplier shall invoice the Company on or at any time after completion of delivery and in respect of the Services, the Supplier shall invoice the Company on completion of the Services

10.2 Unless otherwise agreed in writing, the Company shall pay the price of the Goods and/or Services within 60 days of the date of the invoice from the Supplier.

10.3 Where any taxable supply for VAT or DDP purposes is made under the Contract by the Supplier to the Company, the Company shall on receipt of a valid VAT or DDP invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT or DDP as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

10.4 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company or claimed from the Supplier against any amount payable by the Company to the Supplier under the Contract or otherwise.

11. COMPLIANCE WITH ANTI-BRIBERY REQUIREMENTS

11.1 The Supplier 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) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of the Contract 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 Condition 11.1(b), and will enforce them where appropriate; and

- (d) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
 - (e) immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees).
- 11.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition 11 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.
- 11.3 Breach of this Condition 11 shall be deemed a breach under Condition 15.2(a).
- 11.4 For the purpose of this Condition 11, 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) of that Act and section 8 of that Act respectively. For the purposes of this Condition 11 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

12. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

- 12.1 The Supplier shall have and shall maintain in place throughout the term of the Contract, at its own expense, membership with Sedex (www.sedexglobal.com).
- 12.2 In performing its obligations under these Conditions, the Supplier 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 these Conditions its own policies and procedures to ensure its compliance;
 - (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; and

- (d) require that each of its direct subcontractors and suppliers shall 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.

12.3 The Company may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of Condition 12.2.

13. CONFIDENTIALITY

13.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to the Supplier by the Company or its agents, or are created by the Supplier in performing the Order and any other confidential information concerning the Company's business, affairs, products, customers, clients or suppliers 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.

13.2 The Supplier may only disclose the Company's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Before any such disclosure is made, the Supplier shall (to the extent permitted by law) use its best efforts to inform the Company of full circumstances of the required disclosure and the confidential information that must be disclosed.

13.3 The Supplier shall not use the Company's confidential information for any purpose other than to perform its obligations under the Contract.

14. COMPANY PROPERTY

14.1 Materials, equipment, tools, dies, moulds and copyright, design rights and all other intellectual property rights in drawings, specifications and data supplied by the Company to the Supplier shall be used by the Supplier only for the production of the Goods for supply to the Company or supply of the Services and shall remain the exclusive property of the Company but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

14.2 Any design rights, copyrights or other intellectual property rights created by the Supplier in performing the Order shall belong to the Company absolutely and shall be

used for the purpose only of performing the Order and no other purpose without the prior written consent of the Company. At the Company's request and expense the Supplier shall sign such documents as the Company may require to perfect the Company's title to such intellectual property rights.

15. TERMINATION OF THE CONTRACT

15.1 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 indirect or consequential loss.

15.2 The Company shall have the right at any time by giving written notice to the Supplier to terminate the Contract immediately if:

- (a) the Supplier commits a breach of any of the terms or conditions of the Contract;
- (b) any distress, execution or other process is levied upon any of the assets of the Supplier;
- (c) the Supplier takes any steps or action in connection with its entering administration or provisional liquidation or enters into any compromise or arrangement with its creditors or if an order is made or an effective resolution is passed for its winding up or if a petition is presented to court, or if a receiver and/or manager, 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; or
- (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.

15.3 Termination of the Contract for any reason shall be without prejudice to 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.

16. REMEDIES

16.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied or Services are not performed in accordance with, or the Supplier fails to comply with, any of the terms of the Contract (including but not limited to the undertakings set out in Condition 4), the Company shall be entitled to

any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services has been accepted by the Company:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to require the Supplier to provide a full refund of the price of the rejected Goods;
- (c) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier;
- (d) to reject the Services (in whole or in part) on the basis that a full refund for the Services so rejected shall be paid forthwith by the Supplier;
- (e) at the Company's option to allow the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (f) to refuse to accept any further deliveries of the Goods or performance of the Services but without any liability to the Supplier;
- (g) to carry out at the Supplier's expense any work necessary to make the Goods or Services comply with the Contract;
- (h) to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods or services from a third party; and
- (i) to claim such damages for any additional costs, loss or expenses as may have been sustained or incurred in consequence of or arising from the Supplier's breaches of the Contract.

16.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

16.3 The Company's rights under Contract are in addition to its rights and remedies implied by statute and common law.

17. FORCE MAJEURE

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform any of its obligations under it if such delay or failure results from events or 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 its workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

18. GENERAL

- 18.1 The Supplier shall not be entitled to assign, transfer, mortgage, charge, sub-contract, delegate or deal in any other manner with all or any of the rights and obligations under the Contract or any part of it without the prior written consent of the Company.
- 18.2 The Company may assign mortgage, charge, subcontract, delegate or deal in any other manner with all or any of its rights and obligations under the Contract.
- 18.3 The Supplier shall not use the Contract or the name of the Company in any advertising or promotion without the Company's prior written consent.
- 18.4 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 or remedies under the Contract, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 18.5 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. A waiver of a right or remedy under the Contract is only effective if given in writing.
- 18.6 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.7 If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or defect of a provision or part provision under this Condition shall not affect the validity or enforceability of the risk of the Contract.
- 18.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.