



## Morning Foods Limited (the "Company") Terms & Conditions of Sale

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### 1. Definitions

"Contract" means a contract between the Company and the Customer for the sale and purchase of Goods in accordance with these Terms and Conditions.

"Customer" means any person, firm, company, or other legal entity which places an order, or buys Goods from the Company, including sub-contractors of any such person, firm, company or other legal entity.

"Delivery Date" means the date specified by the Company when the Goods are to be delivered.

"Director" means a legal Director of the relevant legal entity, as registered at Companies House.

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

"Insolvency Event" means (a) the taking by a party of any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), 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; (b) a party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or (c) a party's financial position deteriorates to such an extent that in the Company's opinion, its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

"Order" means the Customer's order for the Goods or the Customer's written acceptance of the Company's quotation (as the case may be).

"Payment" means all sums due to the Company for Goods.

"Price Increase Event" means a circumstance or series of circumstances which has the impact of increasing the Seller's cost of supply of the Goods by 10% or more including without limitations a result of the increased cost of raw materials, energy, taxation, regulation or change in law; or the adverse movement of currency exchange rates.

"Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company.

2. Applicability of Terms and Conditions. The Terms and Conditions shall be incorporated into the Contract and shall apply in place of and prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by trade, custom and practice or course of dealing. Any variation of these Terms and Conditions (including any special terms and conditions

agreed between the parties) shall be inapplicable unless agreed in writing by both a Director of the Company and a Director of the Customer. These Terms and Conditions will be construed in accordance with the laws of England & Wales. Each party irrevocably agrees that the courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms and Conditions or their subject matter or the formation of any Contract (including non-contractual disputes or claims).

### 3. The Price.

3.1 The price shall be the price set out on the Company's quotation or, in the absence of the issue of a quotation in each case, the list price of the Company at the date of acceptance of the Order. The price is exclusive of VAT which shall be due at the rate ruling on the date of the invoice.

3.2 Notwithstanding Condition 3.1 and any other agreement between the Customer and the Company in relation to the price of the Goods, in the event of a Price Increase Event the Company shall be entitled to increase the price of the Goods (and the Customer agrees to pay such increase) by such amount as is necessary to reflect the additional cost to the Company of supply of the Goods occasioned by the Price Increase Event.

4. Terms of Payment. Payment of the Company's invoices shall be due by the last day of the month following the month of issue or such other payment terms as may be agreed in writing by the Company. If payment is not made by the due date for payment the Company may charge interest upon overdue invoices from the date when payment becomes due daily until the date of payment at a rate equal to statutory interest plus Bank of England base rate. In the event of failure to pay by the due date, the Company reserves its right at any time to suspend delivery of future orders. The Company further reserves the right, in its absolute discretion, to demand immediate payment of all outstanding amounts, whether due or not and to take legal action to recover debts and costs. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

5. The Goods and the Contract. The Customer is responsible for the accuracy of the Order. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and Conditions. The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence. 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 Terms and Conditions. A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 14 days, unless otherwise stated, from its date of issue. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

6. Specifications. Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's 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. Goods as supplied will comply with relevant legislation applicable at the point and time of manufacture / dispatch.

Customers should satisfy themselves as to the suitability of goods supplied based upon their own knowledge of the usage of these products. All specifications and technical information are to the best of our knowledge and experience, and no warranty or guarantee is given or implied.

7. Delivery of Goods. The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location"). Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Customer shall make all arrangements necessary to take delivery of goods whenever they are tendered for delivery. Delivery is completed on the completion of unloading of the Goods by the Customer at the Delivery Location. The risk in the Goods shall pass to the Customer on delivery. The Company shall not be liable for any loss or damage caused by late deliveries, where the cause was beyond the Company's control. This includes force majeure events and the Customer failing to give accurate delivery information or not having adequate personnel to accept the delivery. Otherwise, the liability of the Company for failure to deliver the Goods shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. If the Company is unable to complete the scheduled delivery due to the Customer requesting changes, the Company reserves the right to charge the Customer the cost of additional carriage of goods. If the Customer fails to off load the Goods promptly upon the Goods arriving at the Delivery Location, then the Company may charge the Customer for any additional costs and expenses incurred by it as a result of such delay. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

8. Acceptance of Goods. The Customer must check that the quantity and specifications of the Goods delivered correspond with the Contract before signing the delivery note. Claims in respect of short deliveries, or damage to Goods reasonably visible on inspection must be made within 3 days of the date of delivery. The Customer must photograph the damaged Goods and forward to the Company for review and retain the Goods for inspection and collection. The maximum liability for any complaint is the value of the Contract concerned in the relevant delivery. If in the opinion of the Company any Goods are not in conformance with their specification, the Company shall have sole discretion as to how to remedy such breach.

9. Reservation of Title. Notwithstanding delivery and passing of risk therein, or any other provision of these Terms and Conditions, neither the legal or beneficial property in Goods sold by the Company to the Customer shall pass from the Company to the Customer until payment in full (in cash or cleared funds) has been received by the Company. Pending the passing of property in the Goods to the Customer, the Goods shall be kept by the Customer separate from those of either the Customer or of third parties and shall be properly stored, protected, complete, in good condition, adequately insured and in such manner as shall make them readily identifiable as the property of the Company. Until such time as property in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so, forthwith to enter upon any premises of the Customer or of any third party where the Goods are stored or may be, and thereby to repossess the Goods. In the event of an Insolvency Event, the Customer's right to onward sell the Goods shall be suspended with immediate effect and without the need of further notice.

10. Returns. Goods supplied by the Company to the Customer on foot of Contract shall not be returnable by the Customer to the Company without the Company's written consent. An application for consent to such return will be considered by the Company only if such application is received within 3 days of the date of delivery and only if Goods are thought to be incorrectly delivered or

damaged. Such application to be in writing, to state the date and number of the Contract on foot of which such Goods were supplied and delivered together with a full written explanation of the reasons for the return so requested and photographic evidence. In the event of the Company consenting to such a return of Goods, the Customer's account will be credited for the value returned at the invoice price unless otherwise agreed by the Company. Should the Company consider it necessary to do so, the Customer shall comply with any product withdrawal or recall exercise implemented by the Company in which event, the Company's sole liability to the Customer shall be the price of the Goods which are the subject of the withdrawal or recall.

#### 11. Cancellation.

11.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if an Insolvency Event occurs in relation to the Customer.

11.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any Insolvency Event, or the Company 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.

11.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract.

11.4 Termination of the Contract shall not affect any of the Company's rights and remedies that have accrued as at termination.

12. Intellectual Property. All intellectual property rights in the Products (including the formulations and specifications for the Products) are owned by the Company. Nothing in this Agreement transfers ownership of the intellectual property rights in the Products from the Company to the Customer.

13. Confidential Information. Each party acknowledges that it may receive confidential information from the other party. The parties must treat all confidential information as confidential and must not use, exploit, or disclose the confidential information to any person (except the parties' employees and then only to such extent as may be required to enable the parties to comply with the provisions of these Terms) without the prior written consent of the other party. The parties will use the confidential information only for the purpose for which it has been provided. These obligations as to confidentiality survive the expiry or termination of these Terms.

#### 14. Warranties.

14.1 Subject as expressly provided in these Conditions, all warranties, conditions, or other terms implied by statute or common law, are excluded to the fullest extent permitted by law.

14.2 Subject as expressly provided in these Conditions, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty of common law, or under the express terms of the Contract, for any consequential loss or damage (whether loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company or its employees

or agents or otherwise) which arise out of or in connection with the supply of the Goods or their subsequent condition. The Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of (a) the value of the Contract concerned; or (b) if the Goods are delivered by instalments the value of the instalment of the Goods concerned.

14.3 For the avoidance of doubt, the provisions of these Conditions shall apply mutatis mutandis in respect of any claim, howsoever arising, and which concerns or relates to other Goods received by the Customer and which have been subsequently further processed and/or packaged by the Customer for sale to a third party.

14.4 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control, including, but without prejudice to the generality of the foregoing, disease, act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the Government, Parliament or local Council, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), power failure, or breakdown in machinery.

14.5 The Customer must take all reasonable steps to comply with the provisions of the Bribery Act 2010 as it affects the Customer's business including its employees and any third parties it may use during its business and from time to time, at the reasonable request of the Company, it will confirm in writing that it has complied with the provisions of the Bribery Act 2010 and will provide any information reasonably requested by the Company in support of such compliance.

## 15. Additional Terms.

15.1 The Customer shall be bound by, and the Customer shall be liable to comply with, the terms of the Contract upon (a) the placing of an Order with the Company, or (b) the signature on behalf of a Customer who is a limited person by any person purporting to sign with the Customer's authority, or (c) the delivery of Goods to the Customer.

15.2 Failure or delay on the part of the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract.

15.3 The Company reserves the right to defer the date of delivery or reduce the volume of Goods ordered by the Customer, or cancel the Contract without liability to the Customer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to circumstances beyond its reasonable control, including without limitation, a force majeure event or a material fluctuation in currency exchange rates or the cost of raw materials or a change in regulations.

15.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

15.5 No one other than a party to the Contract shall have any right to enforce any of its terms.

15.6 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 deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16. Data Protection. The Company has certain obligations under privacy laws, including the Data Protection Act 1998, to notify individuals how it will process any personal information it collects. The Company may collect data about the Customer from time to time. The Company will treat all personal data as confidential and will not process it other than for a legitimate purpose under legislation.