

Nimbus Foods
Terms and Conditions of Sale

The Customer's attention is drawn in particular to the provisions of clause 5.6, clause 6 and clause 10.

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.

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

Customer: the person who places an order for Goods with Nimbus Foods.

EU Withdrawal: means withdrawal of the United Kingdom from the European Union

Force Majeure Event: has the meaning given in clause 12.1.

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

Nimbus Foods: Nimbus Foods (registered in England and Wales with company number 023043114).

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

Sales Order Confirmation: the sales order confirmation issued by Nimbus Foods in respect of an Order.

Specification: Nimbus Foods's specification for the Goods or, if an alternate specification is submitted by the Customer and agreed in writing by an authorised representative of Nimbus Foods, such alternative specification.

Withdrawal Cost Increase: shall have the meaning given in clause 8.2 (d).

1.2 In these Conditions, the following rules apply:

(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 or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

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 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 and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Nimbus Foods issues a Sales Order Confirmation or, if earlier, when Nimbus Foods delivers the Goods to the Customer, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Nimbus Foods which is not set out in the Contract provided that nothing in this clause 2.4 shall exclude or limit Nimbus Foods's liability for fraud or fraudulent misrepresentation.

2.5 A quotation for the Goods given by Nimbus Foods shall not constitute an offer. A quotation shall only be valid for the period stated therein or, if no period is stated, 5 Business Days from its date of issue and may be withdrawn by Nimbus Foods at any time.

2.6 If any provisions of these Conditions are inconsistent with the express terms of the Sales Order Confirmation, then the terms of the Sales Order Confirmation shall take precedence save in respect of clause 5.6 and clause 10 which shall always apply.

3. GOODS

3.1 The description of the Goods shall be as set out in the Sales Order Confirmation.

3.2 Any samples, drawings, descriptive matter, or advertising produced by Nimbus Foods and any descriptions or illustrations contained in Nimbus Foods's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force and, unless expressly agreed otherwise in writing by an authorised representative of Nimbus Foods, the sale of Goods under the Contract shall not be a sale by sample.

3.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Nimbus Foods against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Nimbus Foods in connection with any claim made against Nimbus Foods for actual or alleged infringement of a third party's intellectual

property rights arising out of or in connection with Nimbus Foods's use of such Specification. This clause 3.3 shall survive termination of the Contract.

3.4 The Customer shall not alter, remove, conceal or otherwise interfere with any marking, or other identification, or source of origin or product information placed by Nimbus Foods on the Goods or on the labelling or packaging of the Goods.

4. DELIVERY AND NON-DELIVERY

4.1 Nimbus Foods shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

4.2 Delivery of the Goods shall be completed:

(a) unless an authorised representative of Nimbus Foods has agreed in writing that Nimbus Foods shall be responsible for unloading the Goods at the Delivery Location, by making the Goods available for unloading at the Delivery Location; or

(b) if an authorised representative of Nimbus Foods has agreed in writing that Nimbus Foods shall be responsible for unloading the Goods at the Delivery Location, on the completion of the unloading of the Goods at the Delivery Location.

4.3 Unless an authorised representative of Nimbus Foods has agreed in writing that Nimbus Foods shall be responsible for unloading the Goods at the Delivery Location, the Customer shall provide at the Delivery Location (at its own cost and expense) adequate equipment and personnel for unloading the Goods.

4.4 The Customer shall be responsible for obtaining all necessary export and import licences which shall be obtained at the Customer's own cost and expense and within sufficient time to allow delivery of the Goods to take place in accordance with the Contract.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Late delivery of the Goods does not entitle the Customer to reject the Goods and/or terminate the Contract.

4.6 If Nimbus Foods fails to deliver the Goods, its liability 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.

4.7 Nimbus Foods shall have no liability for any delay in the delivery of, or failure to deliver, the Goods to the extent that such delay or failure is caused by a Force Majeure Event or the Customer's failure to provide Nimbus Foods with adequate delivery facilities or delivery instructions or any other instructions that are relevant to the supply of the Goods or the Customer's failure to comply with its obligations under the Contract.

4.8 Nimbus Foods shall not be liable for any non delivery of the Goods or any shortfall in the quantity of Goods delivered unless the Customer notifies Nimbus Foods in writing of such non-delivery or shortfall within 2 Business Days of the date on which the relevant Goods would, in the ordinary course, have been received by the Customer.

4.9 If the Customer fails to accept delivery of the Goods when they are ready for delivery or Nimbus Foods is unable to deliver the Goods when they are ready for delivery due to the

Customer's failure to provide Nimbus Foods with adequate delivery facilities or delivery instructions or any other instructions that are relevant to the supply of the Goods or the Customer's failure to comply with its obligations under the Contract, then:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the Business Day after the day on which Nimbus Foods notified the Customer that the Goods were ready for delivery; and
- (b) Nimbus Foods may store the Goods until actual delivery takes place, and charge the Customer for storage and all related costs and expenses (including insurance); and/or
- (c) Nimbus Foods may sell or otherwise dispose of part or all of the Goods and (after deducting reasonable storage and selling expenses) apply the proceeds to discharge any sums owing to, or claimed by, Nimbus Foods under the Contract and then account to the Customer for any balance.

4.10 The Customer shall not be entitled to reject the Goods if Nimbus Foods delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.11 Nimbus Foods 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.

4.12 All trays, pallets, pallets and other returnable packaging used in connection with the delivery of the Goods (**Packaging**) shall remain the property of Nimbus Foods and shall be made available for collection by or on behalf of Nimbus Foods upon request by Nimbus Foods. The Customer shall ensure that all Packaging is kept in good condition whilst in its possession or under its control and that liners are removed prior to the collection of any Packaging by or on behalf of Nimbus Foods.

5. **QUALITY**

5.1 Nimbus Foods warrants that on delivery, the Goods shall:

- (a) conform in all material respects with their description and the Specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Nimbus Foods reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5.3 Subject to clause 5.5 and clause 5.6, if:

- (a) the Customer gives notice in writing to Nimbus Foods within:
 - (i) 1 Business Day of delivery in the case of a defect that is apparent on normal visual inspection (including any defect which is as a result of damage in transit); and
 - (ii) in the case of a latent defect, within 3 Business Days of the latent defect having become apparent or should have been apparent,

- (iii) that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- (b) Nimbus Foods is given a reasonable opportunity of examining such Goods (and any products incorporating any of the Goods); and
- (c) the Customer (if asked to do so by Nimbus Foods) returns such Goods (and, if applicable, any products incorporating any of the Goods) to Nimbus Foods's place of business at Nimbus Foods's cost,

Nimbus Foods shall, at its option, repair or replace the defective Goods (or the defective part of the Goods), or refund the price of the defective Goods in full.

- 5.4 If the Customer has not given notice of any defects in the Goods within the relevant time periods set out in clause 5.3, it shall be deemed to have accepted the Goods.
- 5.5 Nimbus Foods shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
 - (b) the defect arises because the Customer failed to follow Nimbus Foods's oral or written instructions as to the storage and use of the Goods or (if there are
 - (c) none) good trade practice regarding the same;
 - (d) the defect arises as a result of Nimbus Foods following any Specification supplied by the Customer;
 - (e) the Customer alters or repairs such Goods without the written consent of
 - (f) Nimbus Foods; or
 - (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.6 To the extent that the Goods are to be discharged by or on behalf of Nimbus Foods from a delivery tanker directly into the Customer's silo (or any other silo that the Customer directs):
- (a) the Customer shall be responsible for satisfying itself that the goods meet the required specification and is free from contamination before the Customer permits the discharge of the goods into any Customer silo (or any other silo that the Customer directs) to commence. The Customer acknowledges and agrees that it is responsible for carrying out all tests that it considers necessary in order to satisfy itself that such goods meet the required specification and are free from contamination before discharge at the point of delivery commences;
 - (b) in accordance with clause 5.6(a), risk in any such goods shall pass when discharge of the goods from the delivery tanker commences at the point of delivery;
 - (c) subject always to clause 10.2, Nimbus Foods shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), restitution, breach of statutory duty, misrepresentation or otherwise for any loss including (but not limited to):

- (i) loss of profit;
- (ii) loss or revenue;
- (iii) product recall or withdrawal costs or expenses;
- (iv) loss of goodwill;
- (v) loss or damage to reputation;
- (vi) loss of business;
- (vii) loss of business opportunity;
- (viii) loss of anticipated saving;
- (ix) reduction in value of such goods or any other goods with which it is mixed;
- (x) indirect loss;
- (xi) consequential loss,

arising from, as a result of, or in connection with any contamination in such goods that is detected after discharge into any Customer silo (or any other silo that the Customer directs). This clause 5.6 shall survive termination of the Contract.

5.7 Except as provided in this clause 5 (and subject always to clause 10.2), Nimbus Foods shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.8 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.

5.9 These Conditions shall apply to any repaired or replacement Goods supplied by Nimbus Foods.

6. RECALL/WITHDRAWAL OF THE GOODS

The Customer acknowledges and accepts that in accordance with clause 10.3, Nimbus Foods shall not be liable to the Customer for any costs, losses or expenses suffered or incurred by the Customer as a result of or in connection with the recall or withdrawal of any Goods or any product incorporating any of the Goods.

7. TITLE AND RISK

7.1 Save as provided in clause 5.6, the risk in the Goods shall pass to the Customer on completion of delivery or deemed delivery in accordance with clause 4.

7.2 Title to the Goods shall not pass to the Customer until Nimbus Foods has received payment in full (in cleared funds)

- (a) for the Goods; and
- (b) of all other sums owing to or claimed by Nimbus Foods from the Customer.

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

- (a) hold the Goods on a fiduciary basis as Nimbus Foods's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Nimbus Foods's property and in accordance with any written or oral instructions of Nimbus Foods;

- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify Nimbus Foods immediately if it becomes subject to any of the events listed in clause 9.2; and
- (f) give Nimbus Foods such information relating to the Goods as Nimbus Foods may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business PROVIDED THAT such right shall cease immediately upon: (i) Nimbus Foods confirming in writing to the Customer that such right has been withdrawn; or (ii) the Customer becoming subject to any of the events listed in clause 9.2 (or Nimbus Foods reasonably believes that any such event is about to happen and informs the Customer accordingly in writing).

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or Nimbus Foods reasonably believes that any such event is about to happen and informs the Customer accordingly in writing, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Nimbus Foods may have, Nimbus Foods may at any time require the Customer to deliver up the Goods 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.

8. PRICE AND PAYMENT

8.1 The price of the Goods shall be the price set out in the Sales Order Confirmation.

8.2 Nimbus Foods may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any of the following:

- (a) any factor beyond Nimbus Foods's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Nimbus Foods adequate facilities or adequate or accurate information or instructions or the failure of the Customer to comply with its obligations under the Contract; or
- (d) EU Withdrawal materially increasing the Supplier's costs of supplying the Goods. For the purposes of this clause an increase of [] % shall be deemed to be a "material" increase ('Withdrawal Cost Increase').

- 8.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Nimbus Foods, pay to Nimbus Foods such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.4 The Customer shall pay each invoice issued to it by Nimbus Foods in full and in cleared funds on or before the date stated on the Sales Order Confirmation or, where no date is stated or no Sales Order Confirmation is issued, within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Nimbus Foods. Time of payment is of the essence.
- 8.5 If the Customer fails to make any payment due to Nimbus Foods under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 1% for each calendar month or part during which payment is overdue. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by Nimbus Foods.
- 8.6 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). Nimbus Foods 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 Nimbus Foods to the Customer.

9. REFUSAL OR TERMINATION OF CREDIT INSURANCE/CUSTOMER'S INSOLVENCY OR INCAPACITY

- 9.1 If:
- (a) Nimbus Foods's insurers refuse to provide (or refuse to continue provide) credit insurance in respect of any amount due from the Customer to Nimbus Foods; or the
 - (b) Customer becomes subject to any of the events listed in clause 9.2, or Nimbus Foods reasonably believes that the Customer is about to become subject to any of them and informs the Customer accordingly in writing; or
 - (c) the Customer fails to pay any amount due under the Contract by the relevant due date,

then, without limiting any other right or remedy available to Nimbus Foods, Nimbus Foods may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Nimbus Foods without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed

either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors including, without limitation, a proposal for or entry into a Company Voluntary Arrangement or an Individual Voluntary Arrangement;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Nimbus Foods's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

- 10.1 This clause sets out the entire financial liability of Nimbus Foods (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract;
 - (b) any use made or resale of the Goods or of any product incorporating any of the Goods;
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 Nothing in these Conditions shall limit or exclude Nimbus Foods's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any other matter in respect of which it would be unlawful for Nimbus Foods to exclude or restrict liability.
- 10.3 Subject always to clause 10.2, Nimbus Foods shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), restitution, breach of statutory duty, misrepresentation or otherwise, for any:
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) product recall or withdrawal costs or expenses;
 - (d) loss of goodwill;
 - (e) loss of business;
 - (f) loss of business opportunity;
 - (g) loss of anticipated saving; or
 - (h) special, indirect or consequential loss,
- arising under or in connection with the Contract.
- 10.4 Subject always to clause 10.2, clause 10.3, clause 4.6 to clause 4.8 (inclusive) clause 5.6 and clause 5.7, Nimbus Foods's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), restitution, breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed a sum equal to the greater of:
- (a) the price of the Goods; and
 - (b) the insurance cover effected by Nimbus Foods and actually available to meet the claim in question.
- 10.5 Without prejudice to clauses 10.2 to 10.4 (inclusive), clause 4.8, clause 5.3(a) and clause 5.6, Nimbus Foods shall not be liable to the Customer in connection with the Goods, whether such liability arises under the Contract or otherwise, unless:

- (a) adequate details of the basis of the claim are given in writing to Nimbus Foods within 35 days of delivery of the Goods; and
- (b) a claim is commenced (meaning a claim form is issued and served on Nimbus Foods) before the expiry of:
 - (i) 9 months in respect of Goods that have been exported by or on behalf of Nimbus Foods; and
 - (ii) 18 months in respect of Goods that have not been exported by or on behalf of Nimbus Foods,following the date on which the cause of action arose.

10.6 This clause 10 shall survive termination of the Contract.

11. CUSTOMER INDEMNITY

The Customer shall indemnify and hold Nimbus Foods harmless against any costs, claims, liabilities, losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses), damages expenses or fines made against or incurred or paid by Nimbus Foods in connection with the Goods or the use of the Goods arising wholly or partly from the negligence, breach of the Contract or other breach of duty of the Customer or its employees, agents, consultants or sub-contractors. This clause 11 shall survive termination of the Contract.

12. FORCE MAJEURE

12.1 Nimbus Foods shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond Nimbus Foods's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors or the inability or delay in obtaining supplies of adequate or suitable raw materials or packaging, or any consequences arising as a result of or in connection with EU Withdrawal..

12.2 Either party may terminate the Contract by notice in writing to the other if the Force Majeure Event causing such failure or delay in Nimbus Foods performing its obligations under the Contract continues for a continuous period in excess of 60 Business Days.

13. CONFIDENTIALITY

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, recipes, production methods or initiatives which are of a confidential nature and have been disclosed by Nimbus Foods to the Customer, its

employees, agents or subcontractors, and any other confidential information concerning Nimbus Foods's business or its products or its services which the Customer or any of its employees, agents or subcontractors may obtain. The Customer shall ensure that such employees, agents and subcontractors comply with the obligations of the Customer in this clause 13 as if they were the Customer and are subject to obligations of confidentiality corresponding to those which bind the Customer. This clause 13 shall survive termination of the Contract.

14. GENERAL

14.1 Assignment and other dealings.

- (a) Nimbus Foods may at any time assign, transfer, mortgage, charge, subcontract 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, 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 Nimbus Foods.

14.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or sent by fax to the other party's main fax number.
- (b) A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance.

- (a) 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.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended,

it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by an authorised representative of Nimbus Foods.
- 14.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England, notwithstanding EU Withdrawal.
- 14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) and irrevocably waive any objection which they have or may have at any time to the courts of England on the ground that they are an inconvenient or inappropriate forum to settle any dispute (including without limitation on the grounds of EU Withdrawal, related issue or circumstance.)