

# SALES AGREEMENT SPECIAL TERMS

## 1. Term

1.1 This Agreement shall begin on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 12, until the End Date when it shall terminate automatically without notice ("the Term").

## 2. Products

2.1 The items to be supplied are those listed in the Agreement ("the Products").  
2.2 All Products are subject to availability and where any Product is not available the Supplier may substitute an alternative product of equivalent or better quality or withdraw the relevant Product from the range of Products. The Supplier will give notice of substitutions or withdrawals and will endeavour to keep the number of substitutes and withdrawals to a minimum.  
2.3 The Supplier may add products to the range of Products and will inform the Customer of any additions. The addition of new products will be subject to the Customer's agreement where the new product is not of a general type already included in the range of Products.

## 3. Exclusivity

3.1 During the Term, the Customer shall purchase all its requirements for products in the Product Categories from the Supplier and shall not produce, purchase, supply or sell any product which competes with the Products.  
3.2 For the purpose of Clause 3.1 a product shall not be treated as competing with a Product where it is clearly distinguishable by its composition, appearance (disregarding branding or packaging) or taste.  
3.3 If the Supplier is unable to supply the Customer with any of the Products or a satisfactory substitute at approximately the same cost for more than two days the Customer shall be entitled to purchase that particular Product from another party until such time as the Supplier is able to supply the Customer with the Product.

## 4. Customer

4.1 This Agreement incorporates a product price list and delivery structure which the Supplier has developed specifically for the Customer and is confidential.  
4.2 This Agreement applies to any outlet which is owned, operated or managed by the Customer or a subsidiary of the Customer during the Term ("an Outlet").  
4.3 The Customer shall ensure that each Outlet shall comply with the terms of this Agreement. Any volume purchased by an Outlet shall contribute towards the Customer's Minimum Annual Purchase Level.

## 5. Sale of Customer

5.1 The Customer shall promptly notify the Supplier in writing if it is proposed that there be any change in the ownership, control or management of the Customer or an Outlet (whether by way of sale of shares or assets or otherwise).  
5.2 The Customer shall use its reasonable endeavours to procure on terms satisfactory to the Supplier that the Outlet(s) or part of the Customer subject to that change continues for the Term to purchase all its requirements for the Products from the Supplier under the terms of this Agreement or equivalent terms as agreed between the parties.

## 6. Ordering and Delivery Procedures

6.1 The Supplier shall notify the Customer in writing of the ordering and delivery procedures operated by the Supplier from time to time and the Customer shall comply with those procedures.  
6.2 All orders for Products are subject to the Supplier's Terms of Sale applying when the order is accepted by the Supplier.  
6.3 If there is any inconsistency between the Supplier's Terms of Sale and this Agreement, the terms of this Agreement shall prevail.

## 7. Pricing

7.1 Unless otherwise agreed in writing and signed by the Supplier and the Customer, the price of Products shall be as detailed in the Customer's specific product price list.  
7.2 The prices and terms established under this Agreement have been set on the basis of forecasted purchases for each of the Products. If the Customer fails to achieve the Minimum Annual Purchase Level, the Supplier reserves the right to adjust the prices applying under this Agreement to reflect the consequences of the reduction in volume.  
7.3 All the prices set out in the product price list are subject to the addition of value added tax at the applicable rate and are subject to amendment to reflect any alteration in the rate of duty or tax or as otherwise provided in the Supplier's Terms of Sale.  
7.4 The prices for the Products may be varied by the amount (if any) of any price variation incurred and imposed on the Supplier by its suppliers.  
7.5 Unless otherwise agreed in writing, payment for the Products supplied by the Supplier shall be in accordance with the Supplier's Terms of Sale.

## 8. Listing Fee

8.1 Where the Supplier agrees to pay a listing fee to the Customer, this shall be paid in consideration of the Customer (a) entering into this Agreement for the Term; (b) purchasing the Products from the Supplier on an exclusive basis in accordance with the terms of this Agreement at all times during the Term; and (c) achieving the Minimum Annual Purchase Level in each year of the Term.  
8.2 If this Agreement is terminated before the expiry of the Term then any listing fee shall be repaid by the Customer to the Supplier within 30 days of such termination on a pro rata basis.

## 9. Marketing Support

9.1 Where the Supplier agrees to make available to the Customer a sum of money as marketing support, such marketing support monies shall only be used as agreed between the parties in support of the Customer's sale of the Products.  
9.2 The Customer shall not be entitled to any marketing support monies that remain unspent at the end of any specified period to which they relate or upon the termination of this Agreement, for whatever reason.  
9.3 Any marketing support is conditional on the Customer achieving the Minimum Annual Purchase Level and the Supplier reserves the right to reduce these on a pro rata basis if this is not achieved.

## 10. Retrospective Discount

10.1 Where the Supplier agrees to pay a retrospective discount on the Customer's paid purchases of the Products, this be conditional on the on the Customer achieving the Minimum Annual Purchase Level.  
10.2 Unless otherwise agreed, any retrospective discount shall be calculated at the end of each month and paid against the Customer's invoice.  
10.3 A "stepped" retrospective discount applies only to the paid purchases in excess of each relevant target and a "targeted" retrospective discount applies to all paid purchases in the relevant period upon the target being achieved.

## 11. Minimum Annual Purchase Level

11.1 This Agreement, the prices for the Products, any listing fee, marketing support and retrospective discounts amounts (if any) are dependent on the Customer purchasing and paying for Products from the Supplier to the amount shown in the Agreement, exclusive of VAT, during each year of this Agreement ("Minimum Annual Purchase Level").  
11.2 If the Customer fails to achieve the Minimum Annual Purchase Level in any year, the Supplier may (without prejudice to its other remedies under this Agreement) terminate this Agreement immediately on notice to the Customer without liability.

## 12. Termination

12.1 Either party may terminate this Agreement immediately upon written notice to the other if the other party:-  
(i) commits a material breach of this Agreement (including any of the Supplier's Terms of Sale applicable to any order) and, if the breach is capable of remedy, fails to remedy it within 30 days of a written request to do so;  
(ii) fails to pay any amount payable to the other by the due date and that amount remains outstanding for seven days following a written request for payment served on or after the due date; or  
(iii) ceases business, is unable to pay its debts as they fall due, commences winding-up, compounds with its creditors or has a receiver, administrative receiver or administrator appointed over all or any of its assets.

12.2 The Supplier shall also have the right to terminate this Agreement immediately if the Customer or any of its holding companies should be subject to a change of control. Control shall have the meaning given to it in section 1124 Corporation Tax Act 2010.

## 13. Dispute Procedure

13.1 Each party will appoint an individual to deal with the day-to-day management of this Agreement ("the Account Managers"). All disputes and differences shall in the first instance be referred to the Account Managers for resolution, save where one party wishes to seek urgent interlocutory relief, or where one party wishes to obtain judgement in respect of an undisputed liquidated debt, where the party concerned may refer the matter directly to the Courts of England and Wales for resolution.  
14.2 If any dispute or difference referred to the Account Managers is not resolved within 30 days of its referral, at the option of either party, it shall be passed to their respective Managing Directors for resolution within a further 30 days. Any matter not resolved within that further period of 30 days may then be referred to the Courts of England and Wales.

## 14. Confidentiality

14.1 This Agreement contains highly confidential and financially sensitive information belonging to the Supplier. The Customer hereby undertake that it will keep strictly confidential and not use (save as properly required in connection with the operation of this Agreement) any information on the Supplier's costs in relation to the Products or any other information of a financially sensitive nature which the Supplier discloses to the Customer or to which the Customer or its advisors has access either in the course of this Agreement or the negotiations leading up to it (the "Confidential Information").  
14.2 The Confidential Information may be disclosed by the Customer only to its senior officers and employees who need to know it. The Customer shall make such individuals aware of the highly sensitive and confidential nature of the Confidential Information and if the Supplier so request the Customer will obtain confidentiality undertakings from such individuals in the Supplier's favour in such form as the Supplier may reasonably require.  
14.3 The Customer shall safeguard the Confidential Information using measures equivalent to those which it applies to its own highly confidential and sensitive information.  
14.4 The Customer's obligations of confidentiality shall survive any termination of this Agreement and continue until such time as the Confidential Information enters the public domain otherwise than as a result of a breach of these terms by the Customer, its officers or employees.

## 15. Miscellaneous

15.1 This Agreement is the entire agreement between the parties and replaces any previous discussions, negotiations, understandings or agreements in relation to its subject matter.  
15.2 Each party acknowledges that in entering into this Agreement it is not relying on any representation, condition or term not expressly set out in this Agreement.  
15.3 This Agreement may only be varied in writing signed by the authorised representatives of both parties.  
15.4 Nothing in this Agreement shall constitute a partnership, agency, joint venture or employment relationship between the parties.  
15.5 This Agreement is personal to the Customer and may not be assigned or transferred by the Customer without the Supplier's consent.  
15.6 Any notices to be served under this Agreement shall be given in writing and delivered personally or sent by first class pre-paid post to the addressee at its address given in this Agreement or subsequently notified in accordance with this Clause 15.  
15.7 If any provision of this Agreement is found to be invalid, illegal or unenforceable the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid provision the effect of which is the closest possible to the intended effect of the invalid, illegal or unenforceable provision. If the parties are unable to reach agreement on a replacement provision within 30 days of the request that it be replaced (or within such longer time period as the parties may agree) then the Supplier shall be entitled to terminate this Agreement.