

Complan Foods Limited

International Terms &  
Conditions of Sale of Goods  
("Conditions")

Effective from April 2009

## Foreword

We set out below our Conditions of international trading which aim to provide a clear and up-to-date framework within which we can conduct business with you for our mutual benefit and profitability.

The Conditions are effective from April 2009 and apply to all our dealings with you, without modification, unless we notify you otherwise.

These Conditions apply to Complan Foods Limited (“CFL”) and relate to goods sold to customers based outside the UK and Ireland or for export from the UK and Ireland unless a separate distribution agreement is in place between You and Us.

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## 1 What We Mean

In these Conditions the following words have the following meanings:

**“Collection Working Hours”** means between the hours of 8.30am and 5.30pm on a Working Day;

**“Goods”** means any goods agreed in the supply Agreement to be supplied to You by Us (including any part of parts of them);

**“Free Carrier”** means Free Carrier (FCA) (warehouse in UK nominated by Us) (Incoterms 2000) as amended by these Conditions;

**“CFL”** means Complan Foods Limited and its holding companies or subsidiaries or affiliates;

**“Incoterms 2000”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000;

**“Intellectual Property”** means any patent, copyright (including without limitation moral rights and software), database right, design right, registered design, trademark or service mark (registered or unregistered), domain name, know-how, utility model, unregistered design or other industrial or intellectual property right subsisting in any part of the world and, where relevant, any application for protection or proprietorship of any such right;

**“Order Working Hours”** means between the hours of 9am to 5pm on a Working Day;

**“Product Recall”** means as defined in Condition 10.5;

**“Recalled Goods”** means the Goods which are the subject of a Product Recall;

**“Supply Agreement”** means the contractual arrangement between Us (or where We are acting as an agent, Our principal) and You for the supply of Goods, incorporating these Conditions, and which without limitation may include documents, processes and manuals which We and You have agreed form part of the Supply Agreement;

**“Working Day”** means a day which is not a Saturday, Sunday or Bank or Public Holiday in England;

**“We”, “Us”, “Ours”** means Complan Foods Limited which enters into the Supply Agreement (in its own right or as agent for its principal); and

**“You”, “Your”, “Yourself”** means the person(s), firm or company who purchases the Goods from Us.

## 2 Ordering

### 2.1 Basis of the Supply Agreement:

The Supply Agreement shall apply to any arrangement with You for the supply of Goods unless expressly varied or disapplied. Subject to any variation under Condition 2.2, the Supply Agreement will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which You purport to apply under any purchase order, confirmation of order, specification or other document or notification or any other agreement or any form of communication whatsoever and whenever).

### 2.2 Amendments to these Conditions:

Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by one of Our authorised signatories.

### 2.3 Effect of these Conditions:

If we agree with You to incorporate documents, processes, manuals and other arrangements of contractual effect, then if there is a conflict or ambiguity between these Conditions and those other contractual arrangements, these Conditions will prevail.

### 2.4 Offer & Acceptance:

Each order for Goods by You from Us shall be deemed to be an offer by You to purchase Goods subject to these Conditions. Any order shall be accepted in part or full entirely at Our discretion. Orders may only be accepted during Our Order Working Hours by Our issue of an order acceptance, unless agreed otherwise in writing. If an order is accepted, then it is accepted subject to:

- (a) Our confirmation that the Goods are available; and
- (b) if relevant, Our confirmation that the Goods are available that We have not discontinued or altered the Good or Goods or Goods' product range and the manufacture of such Goods has not been hindered or prevented for any reason.

### 2.5 Our rights to Cancel Your Order:

We may cancel part or all of Your order and terminate the Supply Agreement, without incurring any liability to You, if:

In accordance with Condition 2.4(a), the Goods are not available (and We are unable to agree with You the supply of an alternative Good or Goods); or

The Goods have been discontinued or altered or the manufacture of the Goods has in some way been hindered or prevented.

## **2.6 Our Receipt of Your Order:**

If You have not received Our order acceptance, You must contact Us in order to ensure that the order has been received and accepted; otherwise We shall have no liability to You.

## **2.7 Our Order & Delivery Requirements:**

We have minimum and maximum order and/or delivery levels for Goods or configurations of Goods which We will notify to You from time to time. If an order (either in itself or together with other orders placed by You) is below those minimum levels or configurations or above those maximum levels or configurations, We may at Our absolute discretion not accept those orders.

## **2.8 Accuracy of Your Order:**

It is Your obligation to ensure that Your order is complete and accurate. If the terms of an order are not complete or are inaccurate, then We at Our absolute discretion can choose not to fulfil that order. If We deliver Goods in response to an inaccurate order, then You will accept delivery, pay for the Goods and otherwise comply with the Supply Agreement, as if the order was correct.

## **2.7 Our collection Working Hours:**

Unless otherwise agreed by Us, We shall not be obliged to make FCA (Incoterms 2000) deliveries outside of Our Collection Working Hours.

## **2.9 Our Quotes & Estimates:**

Any quotation or estimate made by Us (including where it is given as part as a response to a tender) is given subject to these Conditions. Without prejudice to Our right not to accept an order as set out in Condition 2.4, quotations will only be valid for 14 days from date of issue.

## **2.10 Your Order Cancellation Rights & Obligations:**

You may not at any time cancel Your order (or any part of an order) relating to those Goods by notifying Us without our prior written consent (acting in Our absolute discretion). If We do agree to an order being cancelled then We may have incurred costs in relation to fulfilling that order (such as preparation of the order, picking, transportation) or We may incur costs as a result of cancelling that order (such as costs arising from abortive or part or small deliveries); in which case, cancellation of such order will be subject to the payment of a cancellation charge (payable within 28 days of Our invoice) to reimburse Us for those costs. We will notify You of such cancellation charge as soon as reasonably practical when You seek to cancel the Order.

### **2.11 Discontinuation or Re-Design of Our Good(s) or Range(s):**

If We decide to discontinue, re-design or otherwise alter any of Our Goods, the Goods' product range, Goods specification, coding, packing or configuration, We shall provide You with as much notice as possible. By way of reminder, We do not operate a "sale or return" policy at any time, nor are We prepared to fund any mark-down of any of Your stock.

### **2.12 Your Decision to De-List Our Goods:**

If You decide to de-list any of Our Goods or the Goods' product range, We would expect You to provide Us with as much notice, which is at least three months' prior written notice, unless We agree otherwise with You.

## **3 Delivering Issues**

### **3.1 FCA (Incoterms 2000) Deliveries:**

Unless noted in our order acceptance or otherwise agreed in writing, the Goods shall be delivered to You FCA (Incoterms 2000) Wardle UK in Our Collection Working Hours. We shall be responsible for loading the Goods onto Your (or Your haulier's) vehicle. The point of delivery shall be the point at which we have loaded the goods onto Your (or Your haulier's) vehicle. For the avoidance of all doubt, any damage which occurs to the Goods after this time (i.e. post delivery) shall be for Your responsibility and cost.

### **3.2 Other Types of Deliveries:**

If Our order acceptance refers to or We expressly agree with you to the application of an Incoterm (other than FCA), then that Incoterm shall apply in accordance with Incoterms 2000. If there is any conflict or ambiguity between such an Incoterm (as defined by Incoterms 2000) and these Conditions, then that Incoterm shall prevail unless expressly agreed otherwise in writing or expressly stated in these Conditions. The delivery point determined for that Incoterm in Incoterms 2000 shall apply.

### **3.3 Your Responsibilities in respect of Permissions, Consent and Licenses:**

Irrespective of the Incoterm which shall apply to the Supply Agreement pursuant to Conditions 3.2 or any other delivery arrangements agreed with you pursuant to these Conditions, Your attention is drawn to the fact that You are responsible for:

- (a)** obtaining at Your own expense and risk all necessary permissions, consents and licences (including, but without limitation, those required to be given by any government department or anybody constituted under the law of the country in which you re-sell the Goods for licensing or other regulatory purposes relating to the Goods) to ensure the full and legal operation of the Supply Agreement;

- (b) promptly obtaining at Your own expense and risk all necessary permissions, consents and licences and promptly complying with and fulfilling all procedures, requirements, and responsibilities relating to the import of the Goods.

### **3.4 Our Delivery Times:**

Any dates and times specified by Us for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. Where the Goods are to be delivered FCA (Incoterms 2000), then the time of delivery is when the Goods are made available for collection. If no time is specified, delivery will be within a reasonable time.

### **3.5 Delayed Delivery:**

We will not be liable for any loss (including without limitation loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Our negligence), nor will any delay entitle You to terminate or rescind the Supply Agreement.

### **3.6 Delayed Delivery Due to Events Caused by You:**

If We are unable to deliver the Goods or delivery of the Goods is delayed because:

- (a) You have not provided appropriate instructions, documents, licenses or authorisations; or
- (b) You have not accepted delivery, the Goods will be deemed to have been delivered, risk passing to You (including for loss or damage caused by Our negligence) and We may at Our absolute discretion:
  - (i) wait until You accept delivery of the Goods and charge You for all costs, charges and losses incurred by Us (including, without limitation, haulage, customs, shipping, storage, demurrage, freezer, loading, unloading, insurance, charges and related overhead costs) from the time that the Goods were available for delivery;
  - (ii) store the Goods until actual delivery – in which case, delivery will be in accordance with the Supply Agreement, except that You will also be liable for all related costs and expenses (including without limitation storage, freezer, picking loading, unloading, haulage, shipping, demurrage, customs insurance and related overhead costs) arising from the failure to deliver; or
  - (iii) sell the Goods at the best price readily obtainable and charge You all related costs and expenses (including, without limitation, storage, customs, freezer, picking, haulage, shipping, demurrage, customs, insurance, selling expenses,

any related overhead costs and for any shortfall below the Supply Agreement price); or

- (iv) if the Goods have no value (such as perishable Goods) destroy the Goods and charge You the Supply Agreement price (as set out in clause 5) plus all costs incurred (including without limitation storage, freezer, picking, loading, unloading, haulage, shipping, demurrage, insurance, customs and destruction charges); or
- (v) terminate the Supply Agreement and charge You all costs and expenses incurred by Us (including, without limitation, storage, freezer, picking, loading, unloading, haulage, shipping, demurrage, insurance, customs, insurance and related overhead costs).

### **3.7 Where We Arrange Carriage for You:**

We may on occasion agree with You in writing that although Goods shall be delivered FCA (Incoterms 2000), that We will, as your agent, arrange for the carriage of the Goods. In such circumstances, We act as Your agent and therefore We have no responsibility or liability for such carriage, and You are responsible (either to Us or the haulier as notified by Us to You) for the carriage and insurance costs. Risk passes to You on loading the Goods onto the vehicle. You are responsible for insuring these Goods from and including collection and loading. Your haulier is required to sign Our delivery note on loading the Goods and any delivery note marked "SIGNED UNCHECKED" will mean that We cannot accept liability for any delivery discrepancies or damage which would otherwise have been apparent on inspection upon collection by Your driver.

### **3.8 Our Outer Packaging:**

Unless We agree otherwise with You in writing, We shall use Our reasonable endeavours to ensure that the outer packaging for the Goods shall be reasonably suitable for domestic transit in the UK, but shall have no further liability. You are responsible for ensuring packaging is adequate for onward transit, storage and use. Unless otherwise agreed with You in writing, Goods shall be delivered on one way disposable pallets.

### **3.9 Delivery By Instalments:**

Although We normally make single deliveries, We may at our discretion make delivery of the Goods by instalments and invoice You for each instalment individually. Where the Goods are to be delivered in instalments (such as where not all the Goods ordered by You are available), each delivery shall constitute a separate contract and failure by Us to deliver any one or more of the instalments in accordance with these Conditions or any claim by You in respect of any one or more instalments shall not entitle You to treat the Supply Agreement as a whole as repudiated or to refuse to accept subsequent instalments.

### **3.10 Delivery Notes and Evidence of What We have Delivered to You:**

The quantity of any consignment of Goods as recorded by Us on Our delivery note or equivalent document upon delivery shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary. On Our delivery note, You must clearly record in full any damage or discrepancies which would be reasonably apparent on delivery, including, without limitation, any incorrect Goods, any visual damage or short deliveries. You must also sign or appropriately stamp Our delivery note at the time of delivery and return it, together with any damaged Goods or evidence of any other discrepancy apparent on delivery, to Us. Where it is not possible for You to return the damaged Goods or evidence immediately, You must ensure that Our personnel are given reasonable access to Your premises to verify any discrepancies or damage. We will not consider accepting liability and in no circumstances shall You be entitled to set any amount off (in accordance with Condition 6.5) for any such damage or discrepancy, unless recorded on the delivery note for the Goods. We shall accept no liability for any such damage or discrepancies should a delivery note be marked "SIGNED UNCHECKED".

### **3.11 Your Obligation to Inspect on Delivery:**

You shall be responsible for arranging for inspection of the Goods and ensuring the Goods comply with Your order on delivery. We shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after delivery or where You have not allowed Our personnel to witness that inspection.

### **3.12 Our Failure to Deliver:**

If We fail to deliver the Goods then We shall have no liability for that failure to deliver (even if caused by Our negligence), unless You give written notice to Us of the failed delivery within 5 Working Days of the date when the Goods would in the ordinary case of events, have been delivered.

### **3.13 Scope of Our Liability for Failed Delivery:**

If You give notice to Us in accordance with Condition 3.12, Our liability for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note for the price of the undelivered Goods against any invoice raised for such Goods.

### **3.14 SGA Notices:**

We shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979 (as amended).

### **3.15 When You have Legally Accepted Our Goods:**

You will be deemed to have accepted the Goods as being in accordance with the Supply Agreement unless:

- (a) Apparent Defects:** within 3 days of the date of delivery of the Goods You notify Us in writing of any apparent defect or other failure of the Goods to conform with the Supply Agreement (which would be apparent upon reasonable inspection and testing of the Goods);
- (b) Latent Defects:** You notify Us in writing of any defect or other failure of the Goods to conform with the Supply Agreement within a reasonable time where the defect or failure would not be so apparent within 3 days of the date of delivery, failing which You shall not be entitled to reject the Goods and We shall have no liability for such defect or failure, and You shall be bound to pay the price as if the Goods had been delivered in accordance with the Supply Agreement.

### **3.16 Our Primary Packaging, Labelling and Trade Marks:**

You shall not at any time alter, remove or tamper with any primary packaging (excluding outer packaging) or any labelling or trademarks, or affix any additional trademarks or trade designations on or to any Goods without Our prior written consent. In no circumstances shall You tamper with, remove or alter the “*Use by*” or “*Best Before*” date. You shall not seek registration of or use or associate with the Intellectual Property rights belonging to or used by Us.

### **3.17 The Condition of Our Goods on Resale:**

You shall ensure that all Goods made available for resale are in the same condition (including, without limitation, packaging) as they were on delivery by Us, unless agreed otherwise by Us in writing.

### **3.18 Integrity of Our Labelling:**

You shall not sell or use the Goods after the “*Best Before*” or “*Use by*” date. In no circumstances shall You sell Goods which are damaged so that in Our reasonable opinion their integrity is compromised.

### **3.19 Best Before Dates:**

Unless otherwise agreed in writing, We give no warranty to the amount of time remaining from delivery of the Goods until expiry of the “*Best Before*” or “*Use by*” date marked on the Goods.

### **3.20 Multi-Packs on Resale:**

Where the Goods are supplied in special consumer packs which contain more than one unit (i.e. multi-packs), these are sold to You on the basis that they will be resold to the consumer in this format and You shall not split them into individual units.

### **3.21 Bar Codes:**

The printing of bar codes on Our outer cases is for convenience only and although We will endeavour to observe the GS1 specifications, as administered in the UK by GS1 UK, We cannot accept liability for any loss (including, without limitation, loss of profit), costs, damage, charges or expenses caused directly or indirectly (even if caused by our negligence) attributable to the absence of or any error in such bar code printing.

### **3.22 Your Responsibility in relation to Our Goods:**

You are responsible at Your cost for ensuring that the Goods, the labelling and packaging of the Goods and their manner of sale or promotion are in accordance with all laws and regulations. You must promptly notify Us of any changes You consider are required to be made to the Goods, their labelling, sale or promotion, and agree with Us the measures necessary for fulfilling those requirements. Your attention is drawn to the limits of Our warranty regarding the Goods set out in Condition 7.

## **4 Passing of Risk and Legal Title**

### **4.1 When Risk Passes to You:**

The Goods shall be at Your risk from the time of delivery (which will be determined in accordance with Conditions 3.1 and 3.2).

### **4.2 When Title Passes to You:**

Full legal title to and property in the Goods shall remain vested in Us (or where We are acting as an agent, Our principal) (even though they have been delivered and risk has passed to You) until:

- (a)** we have received payment in full, in cash or cleared funds, for all the Goods in accordance with these Conditions; and
- (b)** all other money payable by You to Us on any other account or under the Supply Agreement or any other contract has been received by Us.

### **4.3 Your Obligations Prior to Transfer of Full Legal Title to You:**

Until full legal title to and property in the Goods passes to You:

- (a) You shall hold the Goods on a fiduciary basis as Our (or Our principal where We are acting as agent) bailee;
- (b) You shall store the Goods at Your premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to Us, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by Us) and are clearly identifiable as belonging to Us (or Our principal) and We shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving You reasonable notice of Our intention to do so;
- (c) We may at any time, on demand and without prior notice, require You to deliver the Goods up to Us and We may repossess and resell the Goods if any of the events specified in Condition 14.1 occurs or if any sum due to Us from You under the Supply Agreement or on any other account or under any other contract is not paid when due;
- (d) for the purposes of this Condition 4, We, Our employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by You and/or any other location where any of the Goods are situated at any time without prior notice;
- (e) We shall be entitled to maintain an action against You for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to You; and
- (f) We hereby authorise You to use and/or sell the Goods in the normal course of Your business and to pass good title in the Goods to Your customers, if they are purchasers in good faith without notice of Our rights. This right shall automatically cease on the occurrence of any event set out in Condition 14.1 and/or if any sum owed to Us by You is not paid when due. If You sell the Goods prior to paying the full price thereof, You shall hold the proceeds of sale on trust for Us and shall immediately pay the proceeds of the sale into a separate bank account. At Our request, You shall assign to Us all claims that You may have against Your purchasers of the Goods.

#### **4.4 Other Remedies:**

Our rights and remedies set out in this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any of Our other rights or remedies under the Supply Agreement or in law or equity.

## 5 The Price of Our Goods

### 5.1 The Price of Our Goods:

Unless otherwise agreed in writing by Us, the price for the Goods shall be the price set out in Our price list for You at the date of receipt of the order by Us (or if that date is not a Working Day, the first Working Day following receipt). We shall notify You from time to time of Our price list for You, We may vary our price list for You from time to time, by giving to You at least one month's – prior written notice of each such change and such change in price shall take effect at the expiry of the said notice period.

### 5.2 What Our Price Includes and Excludes:

Unless otherwise agreed in writing, the price for the Goods is on a FCA (Incoterms 2000) basis and is exclusive of any value added tax, import or export duties or other similar taxes or levies and all costs or charges in relation to pallets and packaging, labelling, translation, unloading, carriage, insurance, freight, import and export and any other handling charges incurred on Your behalf; which You will pay on top of the price, where appropriate, when You are due to pay for the Goods.

## 6 How and When You Pay Us

### 6.1 Your Payment Obligations:

Unless otherwise agreed in writing payment of the price for the Goods is due in advance of (and including) the earlier of:

- (a) the date of delivery of Goods, where the Goods are to be collected by You or You wrongfully fail to take delivery of the same; in which event, We shall be entitled to charge You for the price of the Goods at any time after We have notified You that the Goods are ready for collection or (as the case may be) We have tendered delivery of the Goods; or
- (b) the date of invoice.

The payment period is not effected by any set-off or adjustment in accordance with Condition 6.5.

### 6.2 When We Require Payment:

Time for payment shall be of the essence.

### **6.3 Right to Change Our Payment Terms:**

We reserve the right at any time to vary Conditions 6.1, 6.4 and 6.5 and to require payment before despatch of the goods or provision of such security as may be satisfactory to Us from time to time, taking into account all relevant circumstances relating to the Supply Agreement.

### **6.4 Payment Mechanisms:**

No payment shall be deemed to have been received until We have received cleared funds. All payments (unless We agree otherwise with You) shall be in UK Pounds sterling or such other currency as We shall specify in writing. BACS/CHAPS and credit transfers shall be made to the address notified to You by Us.

### **6.5 Our Right to Full Payment:**

You shall make all payments due under the Supply Agreement without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise, unless You have a valid UK court order requiring an amount equal to such deduction to be paid by Us to You or exceptionally, where We have agreed to such set off in advance in writing.

### **6.6 Netting-Off in Respect of Discrepancies:**

If, pursuant to Condition 6.5, We have agreed in writing to a set-off which relates to a claim in relation to the Goods (for example: the price, short loads or other disputes about delivery) and which are the subject of the invoice, then You must notify Us in writing, obtain Our written consent and issue a debit note within 10 Working Days of date of the invoice. If You fail to follow this procedure then You may not set off that amount.

### **6.7 When Payment Becomes Due:**

Notwithstanding any other provision, all payments payable to Us under the Supply Agreement shall become due immediately upon termination of the Supply Agreement for whatever reason.

### **6.8 Reference to Correct Invoice Identification Numbers:**

If payments received from You are not stated to refer to a particular invoice, We may appropriate such payment to any outstanding invoice addressed to You from Us.

### **6.9 Receipts:**

We will not issue any receipt for payment made by cheque or BACS/CHAPS/credit transfer unless specifically requested by You in advance in writing. However, We will issue a receipt for all cash payments.

#### **6.10 No Credit Facility Offered:**

No indulgence granted by Us to You concerning Your obligations under this Condition 6 shall be or be deemed to be a credit facility, but if any such facility is granted to You by Us, We may withdraw it at Our sole discretion at any time.

#### **6.11 Treatment of Late Payments:**

If any sum due from You to Us under the Supply Agreement or any other contract is not paid on or before the due date for payment, then all sums then owing by You to Us shall become due and payable immediately and, without prejudice to any other right or remedy available to Us, We shall be entitled to:

- (a)** cancel or suspend performance of the Supply Agreement or any order, including, suspending deliveries of the Goods and suspending delivery of any other goods to You until arrangements as to payment or credit have been established which are satisfactory to Us.
- (b)** appropriate any payment made by You to such of the Goods (or any goods supplied under any other contract between You and Us) or as We may think fit;
- (c)** require You to pay for Goods prior to their despatch or collection from Our place of business, and
- (d)** charge You:
  - (i)** interest calculated on a daily basis on all overdue amounts (both before and after judgement) (i.e., from the 1<sup>st</sup> day post payment due date in accordance with Condition 6.1) until actual payment at the rate determined by the Late Payment of Debts (Interest) Act 1998 from time to time; and
  - (ii)** the cost of obtaining English or other court judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

#### **6.12 Your Credit Status:**

Each Supply Agreement shall be subject to Us being satisfied as to Your credit status both prior to and during the period of the Supply Agreement. We shall not be obliged to reveal the source or provide evidence of these checks. If We become dissatisfied at any time with Your credit status, We may suspend performance of the Supply Agreement until You satisfy Us as to Your creditworthiness or give Us such security as We shall deem appropriate for the full value of the Goods.

## 7 Our Promise to You

### 7.1 Our Assurance:

We warrant that all Goods which are food and intended for human consumption shall, up to and including the final day of expiry of the “Best Before” period or the “Use by” date, as marked on the Goods, comply fully with all UK legislation relating to the manufacture and supply of foods including the Foods Safety Act 1990 which is in force at the date of Your order. However, We do not warrant that the Goods or their labelling, packaging and any registrations comply with any other legislation or local law requirements and unless otherwise agreed in writing with You, You shall be responsible for ensuring that the Goods satisfy all legislation provisions in force or to be brought into force in respect of the countries in which You intend to resell the Goods.

### 7.2 Treatment of Defective Good(s):

If You establish to Our reasonable satisfaction that there is a defect in the Goods or the Goods are not otherwise in accordance with the Supply Agreement then We shall at Our option, at Our sole discretion, and within a reasonable time:

- (a) where relevant make goods such defect or failure in such Goods free of charge (including all costs of transportation of any Goods or materials to and from You for that purpose);
- (b) redeliver to You such Goods with Goods which are in all respects in accordance with the Supply Agreement and at Our option collect from You the defective Goods or require You to destroy the defective Goods; or
- (c) issue a credit note to You in respect of the whole or part of the Supply Agreement price of such Goods as appropriate having taken back such materials relating to such Goods, subject, in every case, to the remaining provisions of this Condition 7, provided that Our liability under this Condition 7 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of Our liability under this warranty.

### 7.3 Your Obligations in Relation To Defective Goods: Condition 7.2 shall not apply unless You:

- (a) notify Us in writing of the alleged defect in the Goods within 14 days of the time when You discover or ought to have discovered the defect and in any event within one week of the “Best Before” or “Use by” date; and
- (b) afford Us a reasonable opportunity to inspect the relevant Goods and, if We so request and where it is reasonable to do so, promptly return to Us or such other person We may nominate a sample of the Goods within 24 hours, carriage paid by

You, for inspection, examination and testing and/or otherwise permit Us to have access to the Goods at Your premises or other location where they may be for such purposes.

#### **7.4 Your Obligations on Agreed Uplifts:**

Where We have agreed to redeliver the Goods in accordance with Condition 7.2(b) and collect from You the defective Goods, You are obliged to:

- (a) mutually agree with Us in advance a collection slot; and
- (b) ensure that the Goods to be collected are in the same condition and correspond with the same description and quantity, as stated in Our uplift note.

#### **7.5 Our Replacement Obligations:**

If We elect to redeliver the Goods pursuant to Condition 7.2(b), We shall deliver the replacement Goods to You at Our own expense at the address to which the defective Goods were delivered and if the defective Goods are to be collected by Us the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in You) re-vest in Us.

#### **7.6 Where We Have No Liability to You in Respect of Defects:**

We shall be under no liability under the warranty at Condition 7.1 above:

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions arising after Our delivery of the Goods;
- (b) failure to follow Our instructions (whether oral or in writing), including, without limitation, instructions for storage and dealing with high temperatures;
- (c) in respect of failure to maintain Goods which are chilled food products at a temperature between +2°C and +7°C (35.6° to 44.6°F);
- (d) where Goods are hermetically sealed such as in cans, pouches, or jars, failing to keep the Goods above a temperature of +2°C (35.6°F);
- (e) where Goods held under ambient storage are not kept free of condensation;
- (f) misuse or alteration or repair of the Goods without Our approval;
- (g) where You incorporate or apply a material process to the Goods and no liability under Condition 7.2 would have arisen but for that incorporation or material process;
- (h) if the total price for the Goods has not been paid by the due date for payment;

- (i) if You make any further use of the Goods after giving notice in accordance with Condition 7.3.

#### **7.7 Exclusions:**

The warranties set out in these Conditions are the only warranties which shall be given by Us and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Supply Agreement.

#### **7.8 Our Goods Specification:**

We reserve the right without liability to You to make any changes in the specification of the Goods which are required to conform with any applicable UK statutory or EC requirements or which do not materially affect the quality or performance of the Goods.

## **8 Exclusion and Limitation of Liability**

#### **8.1 Scope of Our Liability:**

Conditions 2.5, 2.6, 3.5, 3.12, 3.13, 3.15, 10.10 and 10.12 and the following provisions set out Our entire liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:

- (a) any breach of the Supply Agreement; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Supply Agreement.

#### **8.2 Legal Liability:**

Nothing in the Supply Agreement excludes or limits Our liability for death or personal injury caused by Our negligence, or for fraudulent misrepresentation.

#### **8.3 Our Maximum Liability:**

Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Supply Agreement shall be limited to 150% of the price of the Goods in respect of which You suffered or incurred such loss or damage.

#### **8.4 Limitation of Scope of Our Liability:**

We shall not be liable to You for any loss of profit or other economic loss (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or loss or damage (contractual, tortious,

breach of statutory duty or otherwise) which arises out of or in connection with the Supply Agreement.

#### **8.5 Your Obligation to Insure:**

The price of the Goods has been calculated on the basis that We will exclude or limit Our liability as set out in the Supply Agreement and You, by placing an order, agree and warrant that You shall insure against or bear Yourself any loss for which We have excluded or limited its liability in the Supply Agreement and We shall have no further liability.

## **9 Your Indemnity to Us**

### **9.1 Your Indemnity to Us:**

You irrevocably and unconditionally agree to indemnify Us, Complian Foods Limited, its employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Supply Agreement:

- (a) any breach by You of Your obligations under the Supply Agreement;
- (b) any breach by Us of Our obligations under the Supply Agreement or any other act or omission (including, without limitation, negligence) of Our employees and agents in excess of Our liability under the Supply Agreement;
- (c) any failure by You to comply with Condition 10.

## **10 Safety First**

### **10.1 Our Product Guidelines:**

You shall comply at all times with Our written instructions and all written guidelines issued from time to time by Us relating to the Goods concerning their storage, application, resale, recall and use and You shall refer Your employees and Your customers to such instructions and guidelines. Our instructions and guidelines, and requirements set out in Condition 10 and 11 override any of Your procedures, instructions or guidelines.

## **10.2 Do You Have a Product Recall Policy?**

On request from Us, You shall provide Us with a copy of Your product recall policy.

## **10.3 Your Obligations in Relation to Our Goods:**

You should satisfy Yourself that the persons responsible for the storage, application and resale of any Goods supplied by Us have all the information required on health, safety, and food hygiene and We shall to the extent permitted by law and except as otherwise expressly set out in the Supply Agreement have no liability to You arising from Our breach of any applicable health, safety or food hygiene legislation or any regulations, orders or directions made pursuant to such legislation.

## **10.4 Your Co-Operation:**

Notwithstanding any other Condition, if We notify You in writing of any defect in or relating to the Goods previously delivered to You at any time or any error or omission which exposes or may expose consumers to any risk of death, injury or damage to property, You shall cooperate fully and promptly with any steps taken by Us under Conditions 10.5-10.9 (inclusive) below.

## **10.5 Recall Mechanisms:**

We may at Our discretion recall any Goods already sold by Us to Our customers (whether for a refund or credit or for replacement of the Goods which shall in each case be determined by Us) ("Product Recall") and/or issue any written or other notification to Our customers about the manner of use or operation of any Goods already sold by You to Your customers.

## **10.6 Your Necessary Assistance in a Recall Situation:**

If there is a Product Recall You will cooperate with Us to ensure that the Product Recall is promptly and effectively dealt with including without limitation (where requested by Us or Our agent):

- (a)** advising promptly, and providing details to Us of, all retail outlets and trade customers to whom Recalled Goods have been supplied, and request such outlets and customers to comply with obligations equivalent to those in Conditions 10.4 to 10.9 (inclusive);
- (b)** ceasing to sell or distribute Recalled Goods;
- (c)** remove Recalled Goods from the shelves at retail outlets and warehouses, return them to Your central location, isolate them from other Goods and label as "QUARANTINED", ensure that the Recalled Goods available for collection by Us;

- (d) if specifically requested by Us destroy the Recalled Goods in accordance with Our guidelines and if required by Us, under the supervision of Our personnel or agent;
- (e) carry out stock audits to ensure all Recalled Goods have been identified and removed;
- (f) display product recall notices, provided by Us, at all outlets;
- (g) provide contact details (including 24 hour telephone contact) of Your relevant personnel responsible for arranging the Product Recall;
- (h) allow Our personnel or agents reasonable access to Your premises to allow audits to take place to check the effectiveness of the Product Recall;
- (i) ensure all of Your relevant personnel are aware of and prepared for applying the Product Recall procedures set out in Condition 10;
- (j) complete and return to Us Our Product Recall checklists that We provide to You.

#### **10.7 Communication of a Recall:**

A product Recall and procedures relating to it may be communicated to You by Us by any reasonable means including via trade publications and media.

#### **10.8 Your Obligation to Update Us on Recall Status:**

On request from Us, You shall report on how You have implemented the Product Recall procedures set out in this Condition 10 and the requirements set out in Condition 11.

#### **10.9 Renewal of Supply:**

We may at Our absolute discretion only supply Goods once We are satisfied that You have complied with the obligations set out at Condition 10.4-10.8 (inclusive).

#### **10.10 Your Obligations:**

If You do not comply with Conditions 10.4 to 10.8 (inclusive) then We, subject to Condition 8.2, shall have no liability (including without limitation product liability and liability arising from Our negligence) for the Recalled Goods.

#### **10.11 Recall Compensation:**

If We do initiate a Product Recall then subject to Condition 10.10 We shall pay to You as compensation:

- (a) a refund of the price paid by You to Us for the Recalled Goods;

- (b) reimburse You for any liability You directly incur to Your retail consumers (but not any other type of customer) in relation to Recalled Goods, to the extent You are legally obliged to in the absence of special contractual conditions.

#### **10.12 Our Limitation of Liability:**

Except as set out in Conditions 10.11 and 8.2, We shall:

- (a) have no liability to You in contract, statute, tort or otherwise for the Recalled Goods or other liability incurred relating to the Product Recall;
- (b) have no liability to You for any product recall charges, expenses or penalties (including without limitation fixed charges) whether notified to Us at all, or before or after a Product Recall.

#### **10.13 Legal Scope of Your Obligations:**

You shall ensure that Your customers, (and in turn Your customers' customers) who are not retail customers, are obliged at contract to comply with the provisions of Conditions 10 and 11 and that We are given the ability to enforce those provisions directly against such customers.

## **11 How We Deal with Consumer Complaints**

### **11.1 We Deal with Complaints:**

You are not authorised to make any representation on Our behalf in response to any consumer or other complaint. On receipt of a customer complaint You must immediately notify Us of the complaint. We may then require that We (or Our agents) deal direct with the consumer or We may agree with You an alternative course of action.

### **11.2 Scope of Our Liability if You Decide to Deal with Consumer Complaints:**

If You do deal with the consumer's complaint in relation to any Goods without reference to Us, then We shall have no liability except to the extent that We are liable to You under these Conditions, to a maximum of the price at which We sold the relevant Goods to You. We shall have no liability to You for Your costs or expenses, administration or otherwise. We shall have no liability under this Condition unless you provide details of the reason for complaint, the date of the complaint, the quality code for the relevant Goods and name and address of the relevant consumer.

## **12 Sub-contracting Assignment and Third Party Rights**

### **12.1 No Sub-Contracting:**

You are not entitled to assign, charge, subcontract or transfer the Supply Agreement or any part of it without Our prior written consent.

### **12.2 Assignability:**

We may assign, charge, subcontract or transfer the Supply Agreement or any part of it to any person.

### **12.3 Third Party Rights:**

Complan Foods Limited shall have the right to enforce any provision or any Supply Agreement. No other person who is not a party to the Supply Agreement (including any employee, officer, agent, representative or sub contractor or either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act or otherwise) to enforce any provision of the Supply Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Condition. Even if a person who is not a party to this Agreement has a right to enforce any provision of this Agreement the parties may vary or cancel this Agreement between them without requiring the consent of such third party.

## **13 Force Majeure**

### **13.1 Events which We cannot Reasonably Control and may Affect Supply:**

We reserve the right to suspend or to cancel the Supply Agreement in whole or in part (without liability to You) if We are prevented from or delaying in the carrying on of Our business and Our obligations under the Supply Agreement due to circumstances beyond Our reasonable control or those of Our suppliers and sub-contractors including, without limitation, Acts of God, pestilence, crop failure, disease, sudden raw product shortages which affect availability of that product on commodity exchanges, el nino, fire flood, lightening, storm, epidemic, quarantine, accident or navigation or breakdown or injury of vessels, accident to or closing of harbours, loss of shipping tonnage due to sinking or sabotage or governmental taking whether or not by formal requisition, sanctions (whether trade sanctions or otherwise, legal or defacto) imposed by anybody, confiscation or nationalisation, restriction or onerous regulation imposed by any authority (legal or defacto) and whether action is pursuant to a law, decree or otherwise, war, revolution, acts of terrorism, strikes, lockouts or other industrial action whether of the affected party's own employees or others, failure of IT system, power failure, fuel, transport, equipment, raw

materials or other goods or services or where due to default of Our suppliers or sub-contractors.

## **14 Breaking or Terminating the Agreement**

### **14.1 Our Suspension and Termination rights:**

We may, as We think fit, (without prejudice to any other rights or remedies We may have against You) immediately suspend further performance of the Supply Agreement or delivery of Goods or stop any Goods in transit or by notice in writing to You terminate the Supply Agreement without liability to Us if:

- (a)** You commit a material breach of any of Your obligations under the Supply Agreement which is incapable of remedy;
- (b)** You fail to remedy a breach of Your obligations under the Supply Agreement which is capable of remedy, or persists in any breach of any of Your obligations under the Supply Agreement after having been requested in writing by Us to remedy or desist from such breach within a period of 14 days;
- (c)** any distress execution or diligence is levied upon any of Your goods or property and is not paid out within 7 days of it being levied;
- (d)** You (being a partnership) or Your partner offers to make any arrangements with or for the benefit of Your creditors or Your partner generally or there is presented in relation to You or Your partner a petition of bankruptcy;
- (e)** You (being a limited company) are deemed to be unable to pay its debts within the meaning section 123 of the Insolvency Act 1986 or You call a meeting for the purpose of passing a resolution to wind up Your company, or such a resolution is passed or You present or have presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of Your business, undertaking property or assets;
- (f)** You cease, or threaten to cease, to carry on business; or
- (g)** Your secured lender takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security; or
- (h)** You suffer or undergo any procedure analogous to any of those specified in Conditions 14.1(c) to (g) inclusive above or any other procedure available in the country in which You are constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;

- (i) You undergo a change of control and for the purposes of this Condition 14.1(i), “Control” has the meaning specified in Section 416 of the Income and Corporation Taxes Act 1998;
- (j) You act or omit to act in such a way as would in Our reasonable opinion bring Us into disrepute or otherwise damage Our reputation;
- (k) We reasonably believe that any of the events specified in Condition 14.1 (a) to (j) (inclusive) above is about to occur in relation to You.

#### **14.2 Non-Default Termination:**

Unless expressly agreed otherwise in writing, We may at anytime, on one month’s written notice, terminate Our relationship with You (including without limitation all contracts with You), without payment of any compensation or other damages caused to You solely by such termination.

#### **14.3 Payments Due at Termination:**

Notwithstanding any such termination or suspension in accordance with Condition 14.1 or 14.2 above, You shall pay Us at the Supply Agreement rate (as set out in clause 5) for all Goods delivered up to and including the date of suspension or termination and the termination of the Supply Agreement or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any previous breach or in respect of any sum owing or to become owing to the other.

#### **14.4 Survival of Certain Provisions After Termination:**

Any termination of this or any Supply Agreement (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **15 Legal Notices**

#### **15.1 Formal Communication with Us:**

All notices between the parties about this Supply Agreement must be in writing and delivered by hand or sent, where posted in the UK for delivery in the UK by pre-paid first class post or otherwise prepaid airmail post or facsimile transmission:

(in case of notices to Us) to Our registered office or such other address as shall be notified by Us to You in accordance with this Condition 15;

or

(in the case of the notices to You) to any address of Yours set out in any document which forms part of this Supply Agreement or such other address as shall be notified to Us by You in writing.

### **15.2 Receiving Notices:**

Notices shall be deemed to have been received:

- (a) if sent in accordance with Condition 15.1 by pre-paid first class post, 2 Working Days after posting (exclusive of the day of posting);
- (b) if set in accordance with Condition 15.1 by prepaid airmail post, 10 Working Days after posting (exclusive of the day of posting)
- (c) if delivered by hand, on the day of delivery or if that is not a Working Day in the country of the recipient, the first Working Day after delivery;
- (d) if sent by facsimile transmission, at 10:00am on the first Working Day following despatch, subject to being able to show that the notice was sent to the correct telephone number.

### **15.3 Where to Send Notices To:**

Notices addressed to Us shall be marked for the attention of the International Director and a copy to any person designated to Us in accordance with these Conditions.

## **16 Everything Else**

### **16.1 Our Intellectual Property Rights:**

Any Intellectual Property rights created by Us in the course of the performance of the Supply Agreement or otherwise in the manufacture of the Goods shall remain Our property. Nothing in the Supply Agreement shall be deemed to have given You a licence or any other right to use any of Our Intellectual Property rights. You shall promptly notify Us of any actual, threatened or suspected infringement by the Goods of any Intellectual Property belonging to any third party or any actual, threatened or suspected infringement by any third party of Our Intellectual Property which comes to Your notice. At Our request and expense You shall do all such things as may be reasonably required to assist Us taking any steps to defend Our rights, including taking, resisting or defending any proceedings in relation to any such infringement or claim.

## **16.2 Structure:**

Nothing in the Supply Agreement shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between parties. You have no authority to bind, and shall not make representations binding Us. You shall not enter or attempt to enter into any contract or commitment on Our behalf or in Our name.

## **16.3 Waiver:**

The rights and remedies of either party in respect of the Supply Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Supply Agreement shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## **16.4 Severance:**

If at any time any one or more of the Conditions of the Supply Agreement (or and sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Supply Agreement and the validity and/or enforceability of the remaining provisions of the Supply Agreement shall not in any way be affected or impaired as a result of that omission.

## **16.5 Confidentiality:**

Both parties shall keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the provisions or existence of the Supply Agreement or any other confidential or sensitive information of the other party.

## **16.6 What You Say About Our Goods:**

You agree that in respect of the Goods You shall not engage in any unfair trade practices or make any false or misleading statement or representations in advertising, printed material or otherwise with respect to any of the Goods bearing Our name or trade marks or other Intellectual Property.

## **16.7 Promotion of Our Goods:**

You shall not advertise or promote the Goods or the supply of Goods to You by Us or carry out any product placement of the Goods without Our prior written consent. All advertisements, point of sale, promotion, merchandising and publicity material for the Goods issued by You shall be subject before issue to Our prior written approval.

### **16.8 Extra-Territorial Activities:**

During the continuance of the Supply Agreement, You shall not solicit to sell Goods in any territory which we have advised You has been exclusively allocated by Us to a distributor unless Our prior written consent has been obtained.

### **16.9 Monthly Reports:**

If requested by Us, You shall send to Us by the fifth day following the end of each calendar month a report of sales made of the Goods in the territory designated by Us to You during that month, together with such other marketing and other information in relation to the operation of the Supply Agreement as We may reasonably require.

## **17 The Courts & Law which Govern Our Relationship**

### **English Law:**

This Supply Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in all respects in accordance with English Law.

### **Arbitration:**

Any dispute or claim arising out of or in connection with the Supply Agreement, including without limitation any question regarding its existence, validity or termination, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996 by one arbitration appointed by the President or acting President of the Chartered Institute of Arbitrators of England and Wales on the request of either party. Such arbitration shall take place in the English Language in London, UK.

### **Vienna Convention:**

The United Nations Convention Contract for the International Sale of Goods 1980 shall not apply to this Contract.

## **Our Contact Details**

International Director  
Complan Foods Limited  
Imperial House  
15-19 Kingsway  
London  
United Kingdom

Tel: +44 20 7395 7553

Email: [ajames@complannutrition.com](mailto:ajames@complannutrition.com)