TERMS AND CONDITIONS FOR SALE OF GOODS

These terms and conditions ('Conditions') set out the basis on which BW Catering Products Limited, a company registered in England and Wales under company number 07477690, whose registered office is at Unit E, Liddington Industrial Estate, Old Station Drive, Leckhampton Road, Cheltenham, Gloucestershire, GL53 0DL ('Company'), agrees to supply goods to any buyer ('Buyer').

1. DEFINITIONS:

1.1 In these Conditions:

'**Buyer**' means the person, firm or company whose Order for Goods is accepted by the Company.

'**Contract**' means the contract for the supply of Goods formed in accordance with Clause 2.6 and subject to these Conditions.

'**Force Majeure Event**' means any event beyond the Company's reasonable control including but not limited to: (a) acts of God, explosion, flood, drought, fire, earthquake, or accident; (b) terrorist attack, war or threat of war, sabotage, insurrection, civil disturbance or commotion; (c) epidemic or pandemic; (d) restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority in the United Kingdom or any of the countries the Company trades with from time to time (including but not limited to Turkey, Peru, Thailand, Egypt or China); (e) import or export regulations or embargoes; (f) shortages of labour or materials; breakdown of plant or machinery; (g) failure of a utility service or transport network; (h) strikes, lockouts or other industrial actions or trade disputes; and/or (i) cyber attack, incident or intrusion including ransomware and other malicious acts affecting IT systems, networks or infrastructure.

'**Goods**' means any product, produce, article or item (or any part of them) to be supplied by the Company.

'**Order**' means any oral or written order for Goods made by the Buyer to the Company.

'**Specification**' means the specification for the Goods (if any) provided or confirmed the Company (as may be amended by the Company with agreement from the Buyer).

'**Working Day**' means any day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 references to any statute or statutory provision are to be interpreted as including any amendment, consolidation, modification, extension, reenactment or replacement thereof;

1.2.2 words denoting the singular include the plural and vice versa;

1.2.3 headings are for reference only and do not affect the interpretation of these Conditions;

1.2.4 references to writing or written include email.

1.3 In entering into a Contract, the Buyer acknowledges that it does not rely on any representations that are not expressly set out in the Contract. Nothing in these Conditions shall affect liability of either party for fraudulent misrepresentation.

1.4 The Buyer shall not be entitled to assign the Contract without the prior written consent of the Company.

2. BASIS OF CONTRACT

2.1 The Buyer agrees that these Conditions shall be the exclusive basis on which any Contracts are entered into, to the exclusion of any terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any failure by the Company to expressly object to any of the Buyer's terms and conditions shall not be deemed as the Company accepting such terms and conditions of the Buyer.

2.2 These Conditions shall not create any agency or partnership between the parties or with any third party.

2.3 Any quotations and/or estimates given by the Company are invitations to treat only and not offers. All quotations are valid on the day given (unless otherwise stated), and subject to final confirmation by the Company.

2.4 Information about Goods sold by the Company displayed on the Company's website is provided in good faith and may be based on information disclosed to the Company by its suppliers. To the extent that information is disclosed to it by its suppliers, the Company relies on the accuracy and completeness of such information and does not accept any responsibility whatsoever for any inaccuracies or omissions in it.

2.5 Any images of Goods on the Company's website are for illustrative purposes and are provided for the purpose of giving an approximate idea of the Goods only. The Company does not guarantee that a device's display of the colours accurately reflects the colour of the Goods. The colour of the Goods may vary slightly from those images.

2.6 A Contract is formed on the earlier of the Company:

2.6.1 issuing written acceptance of the Buyer's Order; or

2.6.2 when the Company sends an 'order confirmation' to the Buyer; or

2.6.3 notifying the Buyer that the Goods are ready for collection; or

2.6.4 the Company dispatching the Goods for delivery.

2.7 All Orders accepted are subject to the availability of Goods being ordered.

2.8 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

3. ORDERING

3.1 An Order may be made:

3.1.1 by email to the following

sales@bwcproducts.co.uk and/or

3.1.2 by telephone to +44 (0) 1242 245 775 between the hours of 8.30am to 5.00pm from Monday – Friday.

3.2 An Order made by the Buyer shall clearly state: (1) the type of Goods; (2) the quantities ordered; (3) when the Goods are required; (4) that the International Chamber of Commerce Incoterms® 2020 ("Incoterms") apply and the applicable rule; (5) the location where the Goods are to be delivered or collected as the case may be; and (6) any applicable minimum quantities for delivery or collection agreed by the parties. If any Order is placed orally or in the event of any dispute as to the Order, the Company's contemporaneous note or record of the Order shall be conclusive as to the contents of the Order and the Buyer shall not dispute the correctness of the same except in the case of manifest error.

3.3 If an Order omits to specify an Incoterm, the default delivery term will be EXW Company's warehouse (Incoterms 2020).

3.4 The Company may accept or reject Orders in its absolute discretion.

4. COLLECTION OF OR DELIVERY OF GOODS

4.1 Delivery shall occur in accordance with the Incoterms rule specified in the relevant Order at the named place/port.

4.2 Time of delivery is when delivery occurs under the applicable Incoterm.

4.3 To the extent that the Goods will be collected by the Buyer or its nominated carrier, the Company will notify the Buyer when the Goods are ready for collection and the Buyer or its nominated carrier shall collect the Goods from the Company's premises on the date or within the period specified in the applicable Order. All collections must be booked in with the Company's warehouse by telephone to +44 (0) 1242 245 775 between the hours of 8.30am to 5.00pm from Monday – Friday.

4.4 Where the Company shall deliver the Goods to the Buyer in accordance with the applicable Incoterm, the Goods will be delivered to the address specified in the Order or where no address is specified, to the Buyer's place of business.

4.5 Where Clause 4.4 applies, delivery of the Goods will be carried out by third party couriers. If any Goods are damaged or lost in transit and risk has not already passed to the Buyer in accordance with the applicable Incoterm, the Company's sole obligation shall be (at its option) to refund the price of the affected Goods or to replace them, and this shall be the Buyer's sole and exclusive remedy in respect of such loss or damage.

4.6 The Company will use reasonable endeavours to meet any delivery dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Goods.

4.7 If the Buyer schedules manufacturing of products using the Goods and related staffing to align with estimated delivery dates it does so at its own risk. The Company shall have no liability for any wasted manufacture or staffing costs incurred by the Buyer.

4.8 The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide adequate delivery instructions or any other instructions relevant to the supply of the Goods.

4.9 If the Company is unable to effect delivery due to any fault of the Buyer, the Buyer shall pay, on demand, all additional storage, insurance and redelivery costs incurred by the Company and the Goods shall be deemed delivered on the original delivery date.

4.10 In circumstances where Goods were to be collected by the Buyer, or its nominated carrier, from the Company but the Buyer has failed to do so by the agreed final collection date, any remaining Goods in the Company's possession shall be deemed to have been delivered in accordance with the Contract and the Company shall be entitled to:

4.10.1 charge the Buyer storage costs and related expenses (such as insurance) on a per pallet per week basis; and

4.10.2 resell or otherwise dispose of part or all of the remaining Goods as it sees fit.

4.11 The Company reserves the right to deliver Goods by instalments and in any sequence of the Order in question, in which case each instalment shall constitute a separate Contract and the Company may invoice each instalment separately.

4.12 Each delivery of the Goods shall be accompanied by a delivery note from the Company showing the Order Number, the delivery date, the type and quantity of Goods included in the Order.

4.13 Unless otherwise required by the applicable Incoterm, the Buyer is responsible for the unloading of the Goods from the delivery vehicles.

4.14 Each party will perform export, transit and import formalities required of it under the Incoterm applicable to the relevant Order. If licenses or authorizations are required and not granted or are withdrawn, the Company may suspend or cancel the affected Order without liability to the Buyer.

4.15 The Buyer will provide timely and complete information, copy documents and end-use/end-user certificates reasonable required for export/import clearance. In addition, the Buyer will notify the Company of the import requirements, if any, necessary for delivery of the Goods.

4.16 The Buyer shall ensure that all information supplied to the Company for inclusion in any export or customs documentation is complete, accurate and provided in a timely manner. The Company shall be entitled to rely without independent verification on any such information.

4.17 The Buyer shall indemnify, hold harmless and, upon demand, fully compensate the Company for all losses, liabilities, costs (including relating to delays with customs clearance), expenses, penalties and damages (including professional fees) suffered or incurred by the Company, its directors, officers, employees, agents and subcontractors as a result of or in connection with:

4.17.1 any inaccuracy or incompleteness in such information;

4.17.2 the Buyer's failure to obtain or maintain any requisite authorisation; or

4.17.3 any breach by the Buyer of its obligations under Clauses 4.14 to 4.16.

5. PRICE AND PAYMENT

5.1 Any price quoted or provided by the Company to the Buyer is based on its current price list as on the date the quotation is given to the Buyer but the actual price payable for the Goods shall be based on the then current price list of the Company at the time the Company issues acceptance of the Order.

5.2 Unless the applicable Incoterm provides otherwise, all prices quoted are *exclusive* of VAT and other applicable taxes, duties, levies, export or import charges, insurance, and delivery costs, which shall be payable by the Buyer in addition.

5.3 The Company may increase the price of the Goods before they are made available for collection or delivered to reflect any increase in the Company's costs due to any:

5.3.1 factor outside the Company's control including, but not limited to, increase in duty rates and taxes;

5.3.2 request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or their Specification;

5.3.3 delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions,

and the Buyer agrees to any such increase.

5.4 The Buyer shall make payment to the Company in respect of the Goods within the payment terms that have been agreed with the Company.

5.5 No payment for the Goods shall be deemed to have been received until the Company has received cleared funds for the whole sum specified in such invoice in the currency stated on the invoice. The Buyer is responsible for payment of all applicable bank charges.

5.6 If the Buyer fails to settle any payment by the due date, the Company may (without prejudice to any other right or remedy it may have):

5.6.1 charge the Buyer interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date the payment was due until the payment is made whether before or after judgment; and

5.6.2 suspend further deliveries of any Goods ordered by the Buyer;

5.6.3 require immediate payment of all outstanding invoices (whether or not due) and/or advance payment for future deliveries; and

5.6.4 recover from the Buyer all costs (including reasonable legal fees) incurred in collecting any overdue amount.

5.7 The Buyer shall make all payments due under a Contract in full without any set-off, counterclaim, deduction or withholding (including any cross-border withholding taxes), except for any deduction or withholding required by law, in which case the Buyer shall gross-up the payment

so that the Company receives the amount it would have received in the absence of the deduction or withholding.

6. CANCELLATIONS

6.1 Cancellation of Orders accepted by the Company shall not be permitted unless with the prior written consent of a director of the Company and provided that the Buyer shall indemnify the Company in full against all losses, costs, damages, charges and expenses incurred by the Company as a result of the cancellation.

6.2 Without prejudice to Clause 7.4, if Goods have been delivered, the Goods may not be returned unless with the prior written consent of a director of the Company and subject always to the following conditions:

6.2.1 the Goods being in the same condition as at the time of delivery or when made available for collection;

6.2.2 (where applicable) the original packaging of the Goods remains intact and unbroken and in reasonable condition;

6.2.3 the Goods are returned at the sole cost of the Buyer; and

6.2.4 the returned Goods are received within 14 days from when consent to the return was given.

6.3 The Buyer may not return Goods that have been relabelled or repackaged in any way.

6.4 Where Goods are cancelled or returned pursuant to this Clause 6, the Company reserves the right to charge a reasonable administration cost.

7. QUALITY AND WARRANTIES

7.1 The Company warrants that as at the date the Goods are delivered or made available for collection, they will:

7.1.1 substantially conform to the Order, the Specification (if any), and these Conditions, subject always to Clause 7.5;

7.1.2 comply with all legislation and regulations in force from time to time in the UK relating to food quality and safety insofar as they apply to importers of the Goods including, to the extent relevant and applicable, EU food regulations;

7.1.3 be free from material defects.

7.2 The Company shall:

7.2.1 carry out such tests on the Goods as is required by law, including those under the Company's HACCP procedures, and where applicable issue certificates. The current version of the procedures, which the Company reserves the right to make changes to from time to time, are available upon request. It is the Buyer's responsibility to check for such changes;

7.2.2 ensure that the Goods are properly packed and secured in a manner as to enable them to reach their destination in good condition; and

7.2.3 obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with these Conditions.

7.3 Save as set out in Clause 7.1 above, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded including, without limitation, any implied terms of satisfactory quality or fitness for a particular purpose. In particular, the Buyer acknowledges and accepts that the Company has no knowledge as to the suitability and purposes for which the Buyer intends to use such Goods for. It is the Buyer's sole responsibility to ensure that the Goods are suitable, and the Company gives no warranty as to the suitability of the Goods, for the Buyer's intended use. If the Buyer is unsure as to the suitability of the Goods for its intended purpose, the Buyer is strongly advised to seek independent expert advice or to carry out such further testing so as to ensure that such Goods are suitable for its intended use.

7.4 Subject to Clause 7.5, if:

7.4.1 the Buyer gives notice in writing to the Company within 7 Working Days from the date of collection or delivery of the Goods, as is relevant, that the Goods do not comply with the warranties set out in Clause 7.1 (unless the defect is not ascertainable from reasonable inspection, in which case the Buyer shall inform the Company of the defect promptly on discovery);

7.4.2 the Company is given reasonable access and opportunity for examining and/or testing such Goods;

7.4.3 the Buyer, where requested, returns such Goods to the Company,

the Company shall at its option and to the extent that it agrees that such Goods do not comply with the warranties set out in Clause 7.1, replace the affected Goods or reimburse the Buyer for the whole or part of the price of the affected Goods (if the quantity of Goods exceeds 1), and this shall be the Buyer's sole and exclusive remedy in respect of such defective Goods.

7.5 The Company shall not be in breach of any of the warranties set out in Clause 7.1 (or elsewhere in these Conditions) or be liable for any defective Goods if:

7.5.1 the Buyer fails to comply with its obligations under Clauses 7.6 and 7.7 in relation to the Goods; or

7.5.2 the Buyer makes any further use of such Goods after giving such notice under Clause 7.4.1; or

7.5.3 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage of the Goods or (if there are none) good trade practice; or

7.5.4 the Buyer uses or alters such Goods without the Company's prior written consent.

7.6 Notwithstanding Clause 7.2.1, the Buyer acknowledges and accepts that Goods ordered cannot be guaranteed to be free from cross-contamination, pathogens or infestation and the Company provides no warranty in this regard. It is the Buyer's sole responsibility to consider whether it requires additional evidence and verification of compliance via additional testing prior to incorporating, processing, repackaging, or otherwise using any Goods.

7.7 The Buyer acknowledges that, notwithstanding the Company's obligations under Clause 7.2.1, the Buyer exercises sole control over the manufacture, formulation, packaging, handling, storage and distribution of Buyer's finished products. To the fullest extent permitted by applicable law, the Company shall have no liability, whether in contract, tort (including negligence), strict liability or otherwise, for any allergen presence, cross-contact, cross-contamination, adulteration or other defect in Buyer's finished product that incorporates the Goods, and the Buyer hereby irrevocably waives and releases all such claims.

7.8 The Buyer shall defend, indemnify and hold harmless the Company, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with:

7.8.1 the Buyer's failure to perform the testing, controls, handling or labelling required under this Clause 7 or any applicable laws or regulations; or

7.8.2 the presence of any allergen or contaminant in Buyer's finished product, except to the limited extent such presence is proved by final, non-appealable judgment to have resulted solely from the Company's wilful misconduct.

7.9 The Company reserves the right, at any time upon reasonable prior notice and during normal business hours, to obtain samples of any relevant batch of the Goods in the Buyer's possession or control, or of any finished product containing the Goods, for the purpose of conducting its own confirmatory or investigative testing. The Buyer shall afford the Company, its representatives and designated laboratories reasonable access to the Buyer's facilities, records and retained samples to carry out such testing and shall cooperate in all respects, including by promptly providing any necessary information regarding manufacturing conditions, batch records and traceability data. The Company may, at its option and at its expense, perform such testing at the Buyer's site, at the Company's designated laboratory or at a mutually acceptable third-party laboratory. In the event that the Company's testing indicates non-conformance with the warranties set out in Clause 7.1, the Company may exercise the remedies set out in Clause 7.4, and the Buyer shall immediately quarantine the affected Goods pending resolution. The rights conferred by this Clause 7.9 are in addition to, and not in limitation of, any inspection or audit rights the Company may have under the Contract or applicable laws or regulations.

7.10 These Conditions shall apply to any replacement Goods supplied by the Company.

8. LIMITATION OF LIABILITY

8.1 Nothing in this Agreement excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, for fraudulent misrepresentation, or for any other liability which cannot be limited by law.

8.2 Subject to Clauses 4.5, 4.7, 4.8, 7.3 to 7.8, 8.1, and 8.3, the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, howsoever arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to 100% of the value of the Order to which the Contract relates.

8.3 Subject to Clause 8.1, the Company shall not be liable to the Buyer for any: (a) loss of profit; (b) loss of revenue or contracts; (c) loss of anticipated savings; (d) wasted management time; (e) depletion of goodwill or otherwise; (f) loss of productivity; or (g) any indirect or consequential loss or damage, howsoever caused which arise out of or in connection with these Conditions or the Contract.

8.4 The provisions of this Clause 8 shall survive the termination of these Conditions and/or the Contract.

8.5 The exclusions and limitations of liability set out in this Clause 8 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 8.

9. TERMINATION AND SUSPENSION

9.1 Without prejudice to the rights and remedies available to the Company (whether under these Conditions, the Contract or otherwise), the Company may without liability and with immediate effect by written notice to the Buyer terminate and/or suspend in whole or in part, any Contracts entered into between the Buyer and the Company if:

9.1.1 the Buyer fails or refuses to take delivery of any Goods in accordance with these Conditions;

9.1.2 the Buyer commits any material breach of these Conditions;

9.1.3 the Buyer fails to pay any sums due to the Company on the due date for payment; and/or

9.1.4 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

9.1.5 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

9.1.6 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the Conditions of the Contract is in jeopardy.

10. TITLE AND RISK

10.1 Risk of damage to or loss of the Goods shall pass to the Buyer as specified by the Incoterm applicable to the relevant Order.

10.2 Title to the Goods shall not pass to the Buyer until the Company receives full payment (in cash or cleared funds) for:

10.2.1 the Goods; and

10.2.2 any other goods that the Company has supplied to the Buyer, in respect of which payment has become due, in which case title to the Goods shall pass at the time of full payment of all such sums (in cash or cleared funds).

10.3 Until title to the Goods has passed to the Buyer, the Buyer will hold the Goods as bailee for the Company.

10.4 At any time before title to the Goods passes to the Buyer, the Company shall be entitled to require the Buyer to deliver up all such Goods. If the Buyer fails to do so promptly the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises of the Buyer or of any third party where the Goods or any part thereof are stored or kept, or are reasonably believed so to be, to retrieve the Goods. The Company shall not be liable for any damage or loss caused to the Buyer or the Buyer's premises provided that the Company has taken reasonable care when retrieving such Goods.

11. FORCE MAJEURE

The Company shall not be liable to the Buyer or be deemed to be in breach of these Conditions Contracts by reason of any delay in performing or any failure to perform any of its obligations caused by a Force Majeure Event.

12. INTELLECTUAL PROPERTY

All intellectual property rights in any material provided by the Company to the Buyer shall remain the exclusive property of the Company or its licensors.

13. NOTICE

Any notice required to be given under the Contract shall be in writing and delivered by hand, by pre-paid first-class post, or by email to the address or email address specified in the Order (or such other address notified in writing). A notice shall be deemed given: (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid first-class post, at 9.00 a.m. on the second Working Day after posting; and (c) if sent by email, at the time of transmission (save where a delivery failure occurs).

14. LAW AND JURISDICTION

14.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

14.2 Any such dispute or claim shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause 14. The seat of arbitration shall be London, the tribunal shall consist of a sole arbitrator, and the language of the arbitration shall be English.

14.3 Nothing in this Clause 14 shall limit the Company's right to commence proceedings in any court of competent jurisdiction to: (a) recover payment of any amount due; or (b) seek injunctive, interim or interlocutory relief in relation to the protection of its intellectual property rights or confidential information.