

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, the following definitions apply:

Brexit means the UK ceasing to be a member state of the European Union;
Brexit Impact Event means any of the following events if directly caused by Brexit:

- a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- b) **Trade tariff:** in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or provision of the Services across borders;
- c) **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by the customer to purchase or use the Goods and/or Services;
- d) **Currency Fluctuation:** where the price for the Goods and/or Services has been agreed in Euro, a change of more than 5% to the rate of exchange of sterling against the Euro, since the date of the Order. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
- e) **Additional Cost:** any additional cost directly or indirectly arising from or attributable to the consequences or impact of Brexit including but not limited to increases in the costs of: raw materials; packaging; transport; labour; trade tariffs; taxes or customs duties
- f) **Other change:** an unforeseeable change (at the date of the relevant Contract) to the business or economic environment in which the Customer operates which is not caused by a) to e) above.

Change of Control: has the meaning set out in s1124 of the Corporation Tax Act 2010;

Conditions: means these terms and conditions for the sale of Goods;

Confidential Information: means the existence and terms of any Order, Specification or Contract and any and all information (whether recorded or supplied in permanent or transitory form) which has been, is now or at any time after the date of these Conditions is disclosed to or made available by the Customer to: the Supplier or its employees; or (where applicable) to any company within the Supplier's Group; or to any other person at the request of the Supplier as recipient; or any information of which the Supplier becomes aware or which comes into the Supplier's control or knowledge as a result of entering into these Conditions or of providing the Services which is of a technical, commercial or financial nature (including software in various stages of development in human or machine readable form, research information, methodologies, knowledge data, know-how, formulae, processes, designs, drawings, specifications, models, diagrams, flow charts, marketing and development plans, business plans, intellectual property rights, customer information, customer lists, actual or prospective sale contracts, photographs and samples) and which relates to the Customer or the Customer's business or that of its Group or to any of the Customer's end customers or their business or that of its Group but shall not include information which:

- (a) is accessible from public sources or is or becomes generally available to third parties (other than as a result of disclosures by the Supplier, by the employees or by any company within the Supplier's Group, of such information in breach of these Conditions; and/or
- (b) either party can establish to the reasonable satisfaction of the other party that the information was known to the Supplier before the date of these Conditions and that it was not under any obligation of confidence in respect of the relevant information; and/or
- (c) becomes lawfully available to the recipient from a source other than the Customer or the end customer, which source is not bound by any obligation of confidentiality to another party in relation to such information; and/or
- (d) was required to be disclosed by law or by the rules or directions of any court or any authority;

Contract: means as the context requires, the legally binding agreement between the Customer and the Supplier made up of either:

- (a) in a tender situation – the Order, these Conditions, and any Specification; or
- (b) in a non-tender situation – the Order, these Conditions, any Specification and the Supplier's acceptance of the Order whether made in writing (subject always to Conditions 2.1 and 2.4) or through delivering the Goods, whichever occurs first); or
- (c) any written agreement between the Customer and the Supplier that incorporates these Conditions within a Schedule to such written agreement;

Control has the meaning given to it in Section 1124 of the Corporation Tax Act 2010;

Customer: means the company or individual purchasing the Goods;

Due Date: means the estimated date(s) for delivery set out in the Order;

EXW: means the provisions of the Incoterm "Ex Works" as set out in Incoterms 2010, which are incorporated into these Conditions as varied under Condition 5

Goods: means any goods or materials to be supplied to the Customer that are specified and/or described in the Order;

Group: in relation to a party, means any subsidiary and/or holding company of that party and any subsidiary of any such subsidiary and/or holding company from time to time;

GSCOP means the Grocery Supply Code of Practice issued under The Groceries (Supply Chain Practices) Market Investigation Order 2009 or any revision or successor code of practice thereof from time to time;

Incoterms 2010: means the 2010 edition of the International Chamber of Commerce official rules for the interpretation of trade terms (ISBN 978-02-942-0080-1);

Intellectual Property Rights: means all patents, trademarks, service marks, registered designs or any applications for any of the foregoing, copyright (including in any text, computer coding, algorithms, applets, or in any other constituent elements of the Outputs), design right, database rights, topographical rights, unregistered trademarks or other intellectual or industrial property rights, look and feel in any graphical user interface in the Outputs, and all know-how whether subsisting in the United Kingdom or anywhere else in the world;

Karro Food Group: means any company under the direct or indirect Control of Element UK Bidco Limited (Co No 10664871) from time to time; including but not limited to: Karro Food Group Limited; Karro Food Limited; Karro ICT Services Limited; Karro Food Frozen Limited; Karro Food Stoke Limited; Karro McGees (RO) Limited; FJG Logistics Limited; T S Bloor & Sons Limited;

Month: means a calendar month.

NDA: means the Supplier's standard non-disclosure agreement from time to time in the form provided to the Customer.

Order: means the Customer's instruction to the Supplier to purchase the Goods, whether in a formal purchase order or otherwise, and/or which may in appropriate circumstances be set out in a tender letter and related tender documentation, and which shall in all circumstances be deemed to incorporate these Conditions to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Specification: means any agreed specification which is attached to or incorporated in the Order that relates to the Goods, and in relation to Goods that are meat the specification may include reference to the appropriate UK Agriculture and Horticulture Development Board (AHDB) meat specifications and/or categories.

Supplier: means Karro Food Limited (registered number SC220000), whose registered office is at 13 Queens Road, Aberdeen, AB15 4YL, or, as applicable, the other relevant member of the Karro Food Group which has accepted the Order for the Goods.

1.2 Reference to any statute or statutory provisions shall include any subordinate legislation made under it, and any subsequent legislation that adds to or replaces it.

1.3 The descriptive headings to clauses, conditions, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.

1.4 Words importing the singular include the plural and vice versa, words importing a gender include every gender and reference to persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons.

1.5 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

1.6 Any reference to a "day" shall mean a period of 24 hours running from midnight to midnight, reference to a "working day" shall mean Monday to Friday inclusive but excluding bank holidays and references to times of the day are to London (UK) time on the applicable date.

1.7 All references to the Customer in these Conditions shall include each company in the Karro Food Group and all members of the Customer's Group who, subject always to Condition 18, shall be entitled to use and rely upon these Conditions.

2. BASIS OF CONTRACT

2.1

Subject to Conditions 2.5 and 2.6, and to any written agreement that has been signed by duly authorised representatives of each of the parties (a **Bespoke Agreement**), these Conditions are the only basis upon which the Supplier is prepared to sell Goods to the Customer and, they shall govern the Contract between the Customer and the Supplier to the entire exclusion of all other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Conditions apply to all of Supplier's sales of the Goods to the Customer under the Contract. To the extent that these Conditions supplement and expand upon the terms of any Bespoke Agreement (for example, including but not limited to, in relation to the impact of Brexit) they shall to such extent be binding upon the parties in relation to sales of Goods



transacted after 1 March 2019, and shall not be held to conflict with such Bespoke Agreement.

2.2 Each Order for Goods by the Customer shall be deemed to be an offer by the Customer to purchase the Goods, subject to these Conditions, which shall be accepted, and the Contract shall be formed when the first of the following occurs:

- 2.2.1 the Supplier issues written acceptance of the Order; or
- 2.2.2 the Supplier acts in reliance upon the Order by taking steps towards delivery of the Goods (where by commencing manufacture of the goods or otherwise); or
- 2.2.3 the Supplier delivers the Goods to the Customer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Order, or any other document of the Customer will form part of the Contract and the Customer hereby waives any right which it otherwise might have to rely on such terms and conditions.

2.4 Any quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 10 days from its date of issue.

2.5 If the Customer is a "Designated Retailer" (as defined under GSCOP) then the parties acknowledge and agree that each Order shall be governed by GSCOP, and to the extent that there is any conflict between the provisions of GSCOP and these Conditions, the provisions of GSCOP shall prevail.

2.6 If the Customer is purchasing the Goods for resale to the public within the UK in a retail environment, but it is not a "Designated Retailer" (as defined under GSCOP) then the parties agree that the provisions of GSCOP shall be incorporated into the Contract and to the extent that there is any conflict between the provisions of GSCOP and these Conditions, the provisions of GSCOP shall prevail.

2.7 No variation to these Conditions shall be binding unless agreed in writing by a duly authorised representative of the Supplier.

2.8 Where the Customer places Orders with the Supplier on a periodic basis but there is not a Bespoke Agreement in place between the parties, it is agreed that the Customer shall not cease to place such periodic Orders with the Supplier (nor materially reduce the volumes of such periodic Orders) without giving the Supplier reasonable written notice of at least 3 Months for each 12 Month period during which such periodic Orders have been placed (e.g 0-12 months of periodic orders will require 3 months' notice, 13-24 months of periodic orders will require 6 months' notice, etc).

3. PRICE OF GOODS AND PAYMENT

3.1 The price of the Goods shall be the price set out in the Supplier's quotation that gave rise to Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. All prices are expressed exclusive of VAT (which will be due and payable by the Customer in addition).

3.2 Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.

3.3 The Customer shall pay the price of the Goods within 7 days of receipt of the Supplier's invoice notwithstanding that actual delivery may not have taken place. The time of payment of the price shall be of the essence of the Contract. Receipts for payment shall be issued only upon request.

3.4 If the parties agree in writing that the Supplier will be responsible for shipping the Goods to the Customer, the Customer will reimburse the Supplier on demand for any and all transportation, insurance and delivery costs incurred by the Supplier in delivering the Goods to the Customer.

3.5 If the Customer fails to make any payment on the Due Date then without prejudice to any other right or remedy available to the Supplier the Supplier may: (a) cancel the Contract and/or suspend any further deliveries to the Customer; and/or (b) appropriate any payment made by the Customer to such of the Goods or goods supplied under any other contract between the Customer and the Supplier as the Supplier may think fit and, notwithstanding any purported appropriation by the Customer, charge the Customer interest both before and after any judgement on the amount unpaid at the rate of 4% above the base lending rate of the Royal Bank of Scotland plc from time to time until payment in full is made (part of a month being treated as a full month for the purpose of calculating interest).

3.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.

4. DELIVERY OF GOODS

4.1 The Supplier may deliver or make available the Goods by separate instalments. Where this is the case, each instalment shall be deemed to be a separate Contract and no cancellation of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

4.2 Any dates and times quoted for delivery of the Goods are estimates only

and time for delivery shall not be of the essence, and shall not be made of the essence by notice, unless previously agreed by the Supplier in writing.

PLEASE NOTE THE FOLLOWING IMPORTANT PROVISION OF CONDITION 4.3:

4.3 **The Supplier shall not be liable for any delay in delivery of the Goods howsoever caused and, subject to the other provisions of these Conditions, the Supplier shall not be liable for any loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, waste of management or office time or for any indirect or consequential loss or damage of any kind however arising caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence). The Goods may be delivered by the Supplier in advance of the estimated delivery date upon giving reasonable notice to the Customer. Delay in delivery shall not entitle the Customer to terminate or rescind the Contract unless (subject always to Condition 12 (Force Majeure) such delay exceeds thirty (30) days.**

4.4 Unless otherwise agreed in writing, the Supplier shall deliver the Goods EXW as varied by this Condition 4 at the Supplier's premises.

4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Supplier may store the Goods at the Customer's risk until actual delivery, whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 Unless otherwise agreed in writing between the parties, the Customer shall return all pallets and dolavs at its own cost to the Supplier.

5. RISK AND PROPERTY

5.1 Risk of damage to or loss of the Goods shall pass to the Customer: (a) in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are available for collection; or (b) in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery; or (c) if the Customer wrongfully fails to take delivery of the Goods, at the time when the Supplier has tendered delivery of the Goods.

5.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Customer for which payment is then due.

5.3 Until such times as the property in the Goods passes to the Customer the Customer shall hold the Goods as bailee and as the Supplier's agent and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of its business (acting always on its own account as principal in any re-sale) but shall account to the Supplier for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored, protected and insured.

5.4 Until such time as the property in the Goods passes to the Customer the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and re-possess the Goods.

5.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy to the Supplier) forthwith become immediately due and payable.

PLEASE NOTE EACH OF THE FOLLOWING IMPORTANT PROVISIONS OF CONDITION 6:

6. **WARRANTIES AND LIMITATION OF LIABILITY**
 6.1 **Subject to the provisions of this Condition 6, the Supplier warrants that the Goods shall at the time of delivery comply with the agreed Specification. All other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.**

6.2 **It is a material and essential condition of the Contract that the Customer at all times ensures that the Goods purchased are stored after delivery at a maximum temperature of 2 degrees centigrade for chilled fresh goods and minus 18 degrees centigrade for frozen goods and under such additional conditions of storage as may be notified to the Customer by the Supplier from time to time.**

6.3 **Subject to Condition 6.6, the Supplier shall not be liable to the Customer in respect of any Goods which have been altered, used, or sold on by the Customer or in which a defect has arisen as a result of a failure by the Customer to follow the Supplier's oral or written**



- instructions as to the storage or use of the Goods or to follow good trade practice in relation thereto.
- 6.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to meet the Specification shall (whether or not delivery is refused by the Customer) in respect of fresh Goods be notified to the Supplier in writing within 24 hours from the time of delivery, and in respect of frozen Goods, be notified to the Supplier in writing within 72 hours from the time of delivery. If delivery is not refused and the Customer does not notify the Supplier accordingly the Customer shall not be entitled to reject the Goods and, subject to Condition 6.6, the Supplier shall have no liability for such defects or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 6.5 Where any valid claim in respect of any of the Goods, based on a defect in the quality or condition of the Goods or their failure to meet Specification, is notified to the Supplier in accordance with these Conditions the Supplier may replace the Goods (or the part in question) free of charge or at the Supplier's sole discretion refer to the Customer the price of the Goods (or a proportionate part of the price) but, subject to Condition 6.6, the Supplier shall have no further liability to the Customer.
- 6.6 Neither party excludes or limits liability to the other party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law (e.g. breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 (as amended) or Section 2 of the Supply of Goods and Services Act 1982 or Section 2(3) of the Consumer Protection Act 1987).
- 6.7 **SUBJECT TO CONDITION 6.6 ABOVE, THE SUPPLIER'S 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 THE CONTRACT SHALL BE LIMITED TO A MAXIMUM OF THE TOTAL PRICE PAYABLE IN RESPECT OF ANY GOODS WHICH HAVE GIVEN RISE TO THE CLAIM OR LIABILITY OR £10,000, WHICHEVER IS THE HIGHER.**
- 6.8 Because the circumstances of the Customer are not fully known by Supplier, the Supplier shall not be liable to the Customer for any:
- 6.8.1 loss of profits, (whether direct or indirect); and/or
 - 6.8.2 loss of business; and/or
 - 6.8.3 loss of business opportunity; and/or
 - 6.8.4 loss of anticipated savings; and/or
 - 6.8.5 depletion of goodwill; and/or
 - 6.8.6 reputational damage or impact; and/or
 - 6.8.7 loss or corruption of data, or the costs and consequences of any data restoration; and/or
 - 6.8.8 costs of loans, borrowing and/or of temporary financing; and/or
 - 6.8.9 additional staffing costs; and/or
 - 6.8.10 costs, expenses or other claims for any type of special, direct or consequential loss or compensation (including loss or damage suffered as a result of an action brought by a third party);
- In each case whatsoever and howsoever caused which arises out of or in connection with these Conditions and/or the Contract, even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.
- 6.9 The Customer agrees that it shall comply with all laws, rules and regulations applicable to the resale of the Goods in each jurisdiction in which they are re-sold by the Customer, including but not limited to packaging, labelling, dating, origin, allergen, and consumer protection requirements, and hereby indemnifies the Supplier and holds the Supplier indemnified and harmless in respect of all costs, claims, actions damages, fines and losses incurred or suffered by the Supplier that arise from or attributable to any act or omission of the Supplier in breach of any such laws, rules and regulations.
7. **TERMINATION**
- 7.1 The Supplier shall be entitled at its sole discretion to terminate the Contract instantly upon written notice to the Customer in the event that:
- 7.1.1 an order is made or a resolution passed for the winding up of the Customer or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or any order is made for the appointment of an administrator to manage the affairs, business and property of the Customer or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule 81 to the Insolvency Act 1986); or
 - 7.1.2 a receiver is appointed over any of the Customer's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer or if any other person takes possession of or sells the other party's assets; or
 - 7.1.3 the Customer makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - 7.1.4 the Customer is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986; or
 - 7.1.5 any distraint is levied against the Customer or its property by any other party; or
 - 7.1.6 the Customer ceases, or threatens to cease, to carry on business; or
 - 7.1.7 any action or occurrence analogous to the provisions of Conditions 7.1.1 to 7.1.6 occurs in respect of the Customer in any jurisdiction; or
 - 7.1.8 the termination rights in Condition 17 relating to Change of Control are exercised by the Supplier; or
 - 7.1.9 the Customer is in breach of these Conditions and such breach is not capable of remedy; or
 - 7.1.10 the Customer is in breach of these Conditions and such breach is capable of remedy, but the breach has not been remedied within 7 days of issue of a written notice by the Supplier to the Customer specifying the breach and required remedy.
- 7.2 The provisions of Conditions 2, 3.5, 4.3, 4.5, 4.6, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20 shall survive termination of the supply of any Goods under an Order, and the termination of any relevant Contract, howsoever arising.
8. **CONFIDENTIAL INFORMATION**
- 8.1 The Customer shall keep, and shall ensure that each of its employees keeps, in strict confidence (and shall not disclose to any third party without the Supplier's prior written consent) any Confidential Information disclosed to it by or on behalf of the Supplier or which comes to its attention, whether before or after the date of the Contract. The Customer shall only use any such Confidential Information for the reason for which it has been disclosed by the Supplier and in particular not use any such Confidential Information to obtain a commercial, trading or any other advantage.
- 8.2 If any proceedings are commenced or action taken which could result in Confidential Information having to be disclosed to a third party, the Customer shall, where permitted to do so, notify the Supplier as soon as reasonably possible of such proceedings or action in writing and shall take any steps reasonably requested by the Supplier to resist or avoid such disclosure.
- 8.3 The duties of confidentiality set out in this Condition 8 shall survive termination of each respective Contract for the longer of a period either of ten years from the date of its termination, or any period over ten years from the date of its termination that is specified in the Order.
- 8.4 The parties agree that in respect of Confidential Information protected by any executed NDA, the provisions of this Condition 8 shall not apply, and shall not supersede, supplement nor replace the provisions of any executed NDA in respect of that Confidential Information, and that this Condition 8 shall only apply to any such Confidential Information to the extent that such Confidential Information is not already protected by any executed NDA in place between the parties.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Unless otherwise agreed in writing between the parties, the Customer shall gain no Intellectual Property Rights in the Goods or in their recipes or processes used to manufacture them, which shall remain with the Supplier, or with their third party respective owner, as applicable.
10. **NOTICES**
- 10.1 Any notice or other communication given or made under these Conditions shall be in writing and may be sent by email, save in respect of a notice of termination which shall be served under the provisions of Condition 10.2 below. Without affecting the validity of the original notice or communication sent by email, the party who sends such email may, in addition and at its sole discretion, send a paper copy of such communication to the recipient under Condition 10.2.
- 10.2 Any such notice or other communication shall be sent to the address for service set out in the Order, or where the Order is silent on such matters, to the relevant party's registered office and, if so addressed, shall be deemed to have been duly given or made as follows:
- 10.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;
 - 10.2.2 if sent by first class post, two working days after the date of posting.
- 10.3 If any notice or other communication would otherwise be deemed to be given or made after 17:00 on any working day, such notice or other communication shall be deemed to be given or made at 9:00 am on the next following working day.
11. **ENTIRE AGREEMENT**
- 11.1 Without prejudice to Condition 2, and subject to Condition 8.4 the Contract constitutes the entire and only agreement and understanding between the parties in connection with the sale of the relevant Goods.



- 11.2 The Customer acknowledges that it has not entered into the Contract in reliance on any undertaking, representation, warranty, promise, assurance or arrangement of any nature from the Supplier which is not expressly set out herein or in the Contract.
- 11.3 Nothing in this Condition 11 shall limit or exclude either party's liability for fraud or for fraudulent misrepresentation.
- 12. FORCE MAJEURE**
- 12.1 The Supplier shall not be liable to the Customer for any delay or failure in performing its obligations under these Conditions if such delay or failure results from events or circumstances outside its reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Supplier's reasonable control: act of God; explosion; flood; extreme weather events; fire; accident; war or threat of war; sabotage; terrorism; insurrection; civil disturbance; restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery; any Brexit Impact Event. Such delay or failure shall not constitute a breach of these Conditions where it is notified to the Customer within a reasonable time, and the time for performance of the Contract shall be extended by a period equivalent to that during which performance is so affected or prevented.
- 13. SUCCESSORS AND ASSIGNS/SUB-CONTRACTING**
- 13.1 The Contract shall be binding upon, and enure for the benefit of, the parties' successors in title.
- 13.2 The Supplier may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the Karro Food Group provided that any act or omission of any such other member shall be deemed to be the act or omission of the Supplier.
- 13.3 The Supplier may assign, novate, transfer, sub-contract, delegate or charge or deal in any other manner the Contract or any part of it (or any rights or obligations under or in connection with it) to any person, firm or company. The Customer shall not (and will not seek to) assign, novate, transfer, sub-contract, delegate or charge or deal in any other manner, the Contract or any part of it (or any rights or obligations under or in connection with it) without the prior written consent of the Supplier.
- 13.4 The relationship between the Supplier and the Customer will be that of an independent contractor. The Customer will have no authority to hold itself out as an agent of the Supplier and will not make any statements, representations or commitments of any kind or take any other action which will be binding upon the Supplier without the Supplier's prior written consent.
- 14. SEVERABILITY**
- 14.1 If any wording in any provision of the Contract and/or these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such wording shall be deemed removed from the relevant provision, and the invalidity or unenforceability of such wording shall not affect the remainder of that provision, nor the remainder of the relevant Contract and/or of these Conditions, and the remaining wording of such provision and all other provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 15. WAIVERS AND RELEASES**
- 15.1 The rights, powers and remedies conferred on the parties in these Conditions are cumulative and are additional to, and not exclusive of, any rights, powers and remedies provided by law or otherwise available to it.
- 15.2 No delay or omission on the part of any party to these Conditions in exercising any right, power or remedy provided by law or under these Conditions shall impair such right, power or remedy or operate as waiver thereof.
- 15.3 The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 15.4 Except as specifically provided in these Conditions, no waiver of any provision of the Conditions shall in any event be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such provision.
- 16. SET-OFF**
- 16.1 Any sums credited by or due from the Supplier to the Customer may, at any time and from time to time without notice, be applied to and/or set-off by the Supplier against any liabilities or obligations of the Customer to the Supplier, whether absolute or contingent, due or to become due, direct or indirect, whether under the Contract or otherwise.
- 17. CHANGE OF CONTROL**
- 17.1 If at any time whilst the Contract is in force there is a Change of Control of the Customer, the Customer shall notify the Supplier within 14 days of the Change of Control having occurred.
- 17.2 Where the Supplier acting reasonably believes that the continuation of the Contract would, as a result of the Change of Control, adversely affect the Supplier's commercial interest, the Supplier shall have the right to terminate the Contract forthwith by giving notice to the Customer, such notice to be served during a period of 90 calendar days from the date on which the notification from the Customer of the Change of Control is served (for the avoidance of doubt, whether served in the correct period or served late). After such time the Supplier's rights to terminate due to a Change of Control under this Condition 17 shall lapse.
- 17.3 For the avoidance of doubt, failure to notify a Change of Control in accordance with Condition 17.1 shall be deemed to be a breach which is not capable of remedy of any applicable Contract for the purpose of Condition 7.1.9.
- 18. THIRD PARTY RIGHTS**
- 18.1 With the exception of the members of the Supplier's Group, a person who is not a party to the Contract incorporating these Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.
- 18.2 All rights conferred under these Conditions (or the Contract made pursuant to these Conditions) may be enforced by any member of the Supplier's Group that has accepted an Order or which is otherwise relying upon them.
- 19. IMPACT OF BREXIT**
- 19.1 If a Brexit Impact Event occurs, the Supplier shall notify the Customer by sending a written notice to the Customer (**Brexit Notice**) giving reasonable details of the relevant Brexit Impact Event and of its negative impact on the Supplier. The Supplier shall be entitled to adjust its prices for all Goods affected by the Brexit Impact Event on a costs pass through basis, both under any existing Contract that is in force, and for future Contracts, and shall set out any such price adjustments in the Brexit Impact Notice. The Customer agrees that it shall pay such adjusted prices for the Goods.
- 19.2 Without prejudice to the provisions of Condition 19.1 above, following delivery of a Brexit Notice:
- 19.2.1 the parties shall meet with 10 days of the Brexit Notice and as reasonably necessary thereafter to discuss, acting reasonably, any amendments to the Contract that may be required to put the Supplier in the position it would have been if not for the Brexit Impact Event that has had a negative impact on the Supplier;
- 19.2.2 each party shall comply with all reasonable requests made by the other party for additional information and documents relating to the Brexit Impact Event relied on, and its negative impact on the Supplier, always provided that information so disclosed shall be a party's Confidential Information for the purposes of Condition 8 (Confidential Information); and any amendments agreed by the parties to the Contract shall be recorded in accordance with Condition 2.7, signed by both parties.
- 19.3 If the parties fail to agree a variation in accordance with Condition 19.2 within 14 days of the date of the Brexit Notice the Supplier may (without affecting any other right or remedy available to it) terminate the Contract without charge or penalty by giving the Customer no less than 7 days' notice.
- 19.4 Save as expressly provided in this Condition 19, a Brexit Impact Event shall not terminate or alter (or give any party a right to terminate or alter) the Contract. If there is an inconsistency between the provisions of this Condition 19 and any other provision of this agreement, the provisions of this Condition 19 shall prevail.
- 20. GOVERNING LAW AND JURISDICTION**
- 20.1 These Conditions, and the Contract, shall be governed by and construed in accordance with the laws of England.
- 20.2 In the event of a dispute between the parties, the Supplier shall (at its sole discretion) decide whether to have the matter finally resolved under Conditions 20.3 and 20.4. In all other circumstances the parties submit to the exclusive jurisdiction of the English courts.
- 20.3 All disputes arising out of or in connection with these Conditions (or the Contract made pursuant to these Conditions), which are referred to arbitration under Condition 20.2, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 20.4 It is agreed that in relation to any dispute referred to arbitration under Condition 20.2:
- 20.4.1 the tribunal shall include at least one arbitrator who is an expert in the purchasing and use of the Goods and/or Services that are in dispute; and
- 20.4.2 the place of arbitration shall be York, England; and
- 20.4.3 the language of arbitration shall be English; and
- 20.4.4 each party shall bear the costs of arbitration as directed by the arbitrators.

