

H J NEILL LIMITED - CONDITIONS OF PURCHASE OF GOODS ("Conditions")

THE SUPPLIER'S ATTENTION IS DRAWN, IN PARTICULAR, TO CONDITIONS 2.4, 3.1, 4, 9 & 11. SUBJECT TO ANY TERMS NEGOTIATED BETWEEN THE PARTIES AND EXPRESSLY RECORDED IN WRITING ON THE ORDER FORM THESE TERMS SHALL PREVAIL.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply to all these Conditions. "HJNL" means H J Neill Limited whose company registration number is 09927950 and whose registered office is at The Sovereign Distillery, Wilson Road, Huyton Business Park, Liverpool L36 6AD U.K. and any company associated with HJNL through which the Goods or Services are sold.

Contract: the Order and the Supplier's acceptance of the Order.

Legislation: shall mean all the laws, statutes, subordinate legislation, rules, regulations, good trade practices and codes of practice which are applicable to the provision of the Goods.

Goods: any goods or services agreed in the Contract to be bought by HJNL from the Supplier (including any part(s) of them).

Order: HJNL's written instruction to supply the Goods, incorporating these Conditions and including a HJNL purchase order number.

Supplier: the person, firm or company who accepts HJNL's Order.

1.2 A reference to Legislation is that Legislation as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

1.3 A reference to one gender includes a reference to the other.

1.4 Headings do not affect the interpretation of these Conditions.

1.5 'Including' 'includes' or 'in particular' means including, includes or in particular without limitation.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.5, these conditions are the only conditions upon which HJNL is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by HJNL from the Supplier shall be deemed to be an offer by HJNL to buy Goods subject to these Conditions and no Order shall be accepted until the Supplier, either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 The Supplier agrees that any attempt to incorporate, or the incorporation of, its terms and conditions into any Contract between HJNL and the Supplier is a material breach of these Conditions for which HJNL is entitled to claim Losses (defined in condition 4 below) incurred as a result of such material breach.

2.5 These Conditions apply to all HJNL's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of HJNL. However, HJNL reserves the right to amend the Conditions from time to time.

3. CONDITIONS

3.1 **In addition to the terms implied by the Sale of Goods Act 1979 or the Supply of Goods Act 1982 (as amended by the Sale and Supply of Goods Act 1994), the Supplier warrants that the Goods shall be of the best available design, of the best quality, material and workmanship, be without fault, be fit for HJNL's intended purpose and conform in all respects with the Order and specification and/or patterns supplied or advised by HJNL to the Supplier and in so far as the Goods are services to be performed by the Supplier those services shall be provided using the utmost care, skill & diligence, by competent and appropriately trained and qualified personnel and the Supplier warrants that the scope of the services is within its expertise and usual business.**

3.2 The Supplier shall comply with all Legislation applicable to the manufacture and supply of the Goods.

3.3 The Supplier warrants its expertise and confirms the accuracy of all statements and representations whether oral, written or otherwise made in respect of the Goods prior to the submission of each Order and acknowledges HJNL's reliance upon those statements.

3.4 The Supplier warrants that it is authorised to enter into the Contract and that it is in possession of any permits, consents or licences required to perform the Contract.

3.5 The approval by HJNL of any designs provided by the Supplier shall not relieve the Supplier of its obligations under any provisions contained in this condition.

3.6 Prior to delivery of the Goods to HJNL's place of business, or collection of the Goods by or on behalf of HJNL, HJNL shall have the right to inspect and test the Goods at all times.

3.7 If the results of such inspection or testing cause HJNL to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by HJNL to the Supplier, HJNL shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition HJNL shall have the right to require and witness further testing and inspection.

3.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

3.9 Where the provision of Goods involves access to any personal data the Supplier hereby warrants that it shall at all times comply with all applicable data protection legislation.

3.10 Any supplier or subcontractor requiring access to HJNL's site must first be authorised as an approved contractor and the Supplier shall act efficiently to ensure such authorisation is granted promptly, so as not to delay performance of the Contract.

3.11 If any of the Goods fail to comply with the provisions set out in this condition 3 HJNL shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. INDEMNITY

4.1 **The Supplier shall keep HJNL indemnified in full from and against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) ("Losses") awarded against or incurred or paid by HJNL (to the extent that such Losses are not reasonably capable of mitigation) as a result of or in connection with:**

(a) any breach of conditions 3.1, 3.2 or 3.9;

(b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

(c) any claim made against HJNL in respect of any liability, loss, damage, injury, cost or expense sustained by HJNL's employees or agents or by any customer or

third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

4.2 Insofar as the Supplier has any liability under condition 4.1 above HJNL may request that such liability is discharged by way of payment in instalments (above).

4.3 **HJNL's liability howsoever arising (including without limitation breach of contract, tort (including negligence), restitution or breach of statutory duty is limited to the total invoices paid to the Supplier by HJNL in relation to the Contract. HJNL does not accept liability for loss of profit, loss of revenue, goodwill or opportunity whether or not such losses are reasonably foreseeable. Nothing in the Contract shall exclude or limit a party's liability for personal injury or death caused by its negligence, fraudulent misrepresentation or any other loss to the extent that it cannot be excluded or limited by law.**

5. DELIVERY/COLLECTION

5.1 Where it is agreed that the Goods are to be delivered the Goods shall be delivered DDP (HJNLgwynn) (Incoterms 2010) or to such other place of delivery as is agreed by HJNL in writing prior to delivery. Goods which are services are to be performed at the place specified by HJNL in the Order or as otherwise notified by HJNL.

5.2 HJNL shall off-load the Goods at its own risk, however, HJNL can refuse to off-load the Goods (at the Supplier's expense) if it reasonably suspects that: (1) the Goods are damaged; or (2) the Goods are likely to be damaged by trying to off-load the Goods; and/or (3) it would be unsafe to off-load the Goods.

5.3 The date for delivery or collection shall be specified in the Order or, if no such date is specified, then delivery to HJNL or availability for collection by or on behalf of HJNL shall take place within 28 days of the Order.

5.4 The Supplier shall invoice HJNL upon, but separately from, despatch of the Goods to HJNL. Where the Goods are services, the Supplier may invoice after HJNL has written to the Supplier to confirm that the services are complete.

5.5 Each invoice shall include such supporting information required by the HJNL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

5.6 The Supplier shall ensure that each delivery (whether being delivered or collected) is accompanied by a delivery note which shows, amongst other things, the Order number, date of Order, number of packages and contents or where relevant the volume of bulk liquids. In the case of part-delivery the delivery note will show the outstanding balance or volume remaining to be delivered or collected where applicable.

5.7 Unless otherwise agreed in writing by the parties time for delivery or collection shall be of the essence. It shall be the duty of the Supplier at all times to use his best endeavours to prevent any delay being caused and to minimise any such delay as may be caused and to do all that is reasonably required, to the satisfaction of HJNL, to effect delivery of or have ready for collection the Goods.

5.8 Subject to any agreed extension of time and to condition 15.1 should the Goods or any portion of the Goods immediately not be delivered or available for collection on time, the Supplier shall be liable to pay to HJNL, by way of liquidated damages for each week or part thereof during which he is in default in respect of delivery of or making available for collection the Goods: (i) 2% of the relevant price stated in the Contract; or (ii) 2% of the proportion of that price appropriate to the portion of the Goods to which the Supplier is for the time being in default, provided that the maximum amount payable under condition 5.8 shall be 20% of the price to be paid by HJNL for the Goods.

5.9 Unless otherwise stipulated by HJNL in the Order, deliveries shall only be accepted by HJNL in normal business hours.

5.10 If the Goods are not delivered or available for collection on the due date then, without prejudice to any other rights which it may have, HJNL reserves the right to:

(a) cancel the Contract in whole or in part;

(b) refuse to accept any subsequent delivery or making available for collection of the Goods which the Supplier attempts to make;

(c) recover from the Supplier any expenditure reasonably incurred by HJNL in obtaining the Goods in substitution from another supplier; and

(d) claim damages for any additional reasonable costs, loss or expenses incurred by HJNL which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

5.11 If the Supplier requires HJNL to return any packaging material (i.e. pallets) to the Supplier that fact must be clearly stated on any delivery note handed over to HJNL and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.12 Where HJNL agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle HJNL at its option to treat the whole Contract as repudiated.

5.13 Save where otherwise agreed, if the Goods are delivered to HJNL in excess of the quantities ordered HJNL shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

5.14 If any of the Goods, or the packages, containers or similar containing the Goods, do not comply with the Order or with any term of this Contract, including those relating to quantity, quality or description, HJNL shall be entitled to reject those Goods or any part thereof at any time after delivery or collection, regardless of whether HJNL is regarded under Sale of Goods Act 1979 or otherwise as having accepted them. Similarly, if any Goods which are services do not comply with the Order or with any term of this Contract HJNL reserves the right to remove workers and request alternative workers from the Supplier at the Supplier's cost. Any acceptance of such Goods by HJNL shall be without prejudice to any rights that it might have against the Supplier. HJNL shall be entitled to return any rejected Goods, carriage paid by the Supplier and at the risk of the Supplier.

5.15 HJNL shall not be deemed to have accepted the Goods until it has had five business days to inspect them following delivery. HJNL shall also have the right to reject the Goods as though they had not been accepted for five business days after any latent or hidden defect in the Goods has become apparent.

6. RISK/PROPERTY

6.1 The Goods shall remain at the risk of the Supplier until delivery to HJNL is complete (which is after the Supplier or its nominated haulier has confirmed to an authorised HJNL representative that the Goods are safe to unload) when ownership of the Goods shall pass to HJNL. It shall be the duty of the Supplier at all times to maintain a contract of insurance over the Goods (until such time as the risk passes to HJNL) and, on request, to assign to HJNL the benefits of such insurance. The Supplier shall or procures that its nominated haulier shall ensure that Goods to be delivered to HJNL are stowed, loaded and secured properly and in accordance with best industry practice so as to prevent damage to the Goods during transportation.

- 6.2 For the avoidance of doubt, SAVE in respect of the delivery of specialist Goods (for example CO²), after confirmation has been received by HJNL in accordance with condition 6.1 above, HJNL shall be responsible for off-loading of the Goods.
- 6.3 The Supplier shall or procures that its nominated haulier shall comply at all times with HJNL's security procedures, booking in procedures and health and safety procedures, details of which are available upon request.
- 6.4 In the event that it is agreed that the Goods are to be collected from the Supplier risk in the Goods shall pass to HJNL or its nominated haulier when the Goods are safely and correctly stowed, loaded and secured for transportation onto HJNL's or its haulier's vehicles. For the avoidance of doubt, HJNL is not responsible for the loading of the Goods onto its and/or its nominated haulier's vehicles.
- 6.5 HJNL may from time to time agree that certain third party stock (including labels) may be held on its site. Title to such stock passes to HJNL when it is used by HJNL on its products.
- 6.6 Without prejudice to any other term of the Contract, HJNL accepts no responsibility for loss of or damage to any of the Supplier's tools, equipment or other property and the Supplier may not without prior written consent store anything overnight at HJNL's premises.
- 7. PRICE**
- 7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by HJNL shall be exclusive of value added tax but inclusive of all other charges and, where the Goods are services, shall be inclusive of any transport, accommodation or other expenses.
- 7.2 No variation in the price or extra charges shall be accepted by HJNL unless agreed by the parties in writing.
- 8. PAYMENT**
- 8.1 Subject to 5.5 and save where otherwise agreed payments are made in accordance with HJNL's standard payment terms from time to time, subject to receipt of a valid VAT and correctly rendered invoice. For details on HJNL's payment terms please contact HJNL's purchase ledger department. Time for payment shall not be of the essence of the Contract even where notice to the contrary is served.
- 8.2 Without prejudice to any other right or remedy, HJNL reserves the right to set off any amount due and payable at any time from it to the Supplier against any amount due and payable by Supplier to HJNL under the Contract.
- 8.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum may bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Lloyd's Bank base rate from time to time. The Supplier is not entitled to suspend deliveries without reasonable prior notice to HJNL of the Goods as a result of any sums being outstanding.
- 9. CONFIDENTIALITY**
- The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, recipes, formulations, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by HJNL or its agents and any other confidential information concerning HJNL's business, its products and/or its new product ideas, information which the Supplier may obtain from HJNL and the Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to HJNL and shall ensure that such employees are subject to like obligations of confidentiality as bind the Supplier. This condition 9 shall survive termination and/or expiry of any Contract for a period of 2 years.
- 10. HJNL'S PROPERTY**
- Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by HJNL to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the goods in relation to any Contract shall at all times be and remain the exclusive property of HJNL but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to HJNL and shall not be disposed of other than in accordance with HJNL's written instructions, nor shall such items be used otherwise than as authorised by HJNL in writing.
- 11. TERMINATION**
- 11.1 **SAVE where the Supplier and HJNL have agreed in writing a fixed term contract, HJNL shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier reasonable prior written notice whereupon all work on the Contract shall be discontinued and HJNL shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.**
- 11.2 Without Prejudice to rights elsewhere in the Contract, HJNL shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- the Supplier commits a breach of any of the material terms and conditions of the Contract, which, for the avoidance of doubt, include any breach of conditions 2.4, 3.1, 3.2, 4, 5.3 and 9; or
 - the Supplier breaches any term of this agreement, other than those referred to at sub-paragraph 11.2(a) above, and does not remedy such breach within 7 days of being given notice to do so;
 - any distress, execution or other process is levied upon any of the assets of the Supplier; or
 - the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
 - the Supplier ceases or threatens to cease to carry on its business; or
 - the financial position of the Supplier deteriorates to an extent that, in the opinion of HJNL, the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of HJNL accrued prior to termination. The Conditions that expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 12. REMEDIES**
- 12.1 Without prejudice to any other right or remedy which HJNL may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract HJNL shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by HJNL:
- to rescind the Order;
 - to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
 - at HJNL's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
 - to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
 - to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 13. ASSIGNMENT AND SUBCONTRACTING**
- 13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of HJNL.
- 13.2 HJNL may assign the Contract or any part of it to any person, firm or company without notice.
- 13.3 The Supplier shall not, without HJNL's prior written consent, appoint any subcontractor to perform any services in relation to the Contract and where such consent is given the Supplier shall remain liable for any subcontractor's acts or omissions.
- 14. COMPLIANCE**
- 14.1 HJNL will not tolerate bribery. Offering bribes to employees or representatives of HJNL will be treated seriously and may be reported to the appropriate authorities. If you believe that any employee or representative of HJNL has offered a bribe on behalf of HJNL, please contact HJNL's without delay by email to: info@hjneill.com.
- 14.2 HJNL complies with the Ethical Trading Initiative (further details of which can be found at <http://www.ethicaltrade.org/>) therefore should HJNL reasonably suspect that any Supplier (or its subcontractors or agents) fails to comply with the standards expected by the Ethical Trading Initiative it reserves the right to serve immediate notice of termination of Contract.
- 14.3 In performing its obligations under the Contract, the Supplier shall:
- comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK,
- should HJNL reasonably suspect that any Supplier (or its employees or representatives) is in breach of this clause 14.3 it reserves the right to serve immediate notice of termination of Contract.
- 15. FORCE MAJEURE**
- 15.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods to be delivered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control for the following specified reasons only: acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion and flood.
- 15.2 HJNL reserves the right to defer the date of delivery or payments or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in carrying on of its business due to circumstances beyond the reasonable control of HJNL including, without limitation, acts of God, governmental actions, war or natural emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials.
- 16. GENERAL**
- 16.1 Each right or remedy of HJNL under the Contract is without prejudice to any other right or remedy of HJNL whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by HJNL in enforcing or partially enforcing any provision of the Contract shall not be claimed as a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 Any waiver by HJNL of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it, save that it may be enforced by companies associated to HJNL.
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.