

Mizkan Euro Ltd.

Terms and Conditions of Sale to Business Customers

1. DEFINITIONS

In these terms and conditions:

- 1.1. The “Company” means Mizkan Euro Ltd. (No. 08053234), with its registered office at 1st Floor Building 4 Chiswick Park, 566 Chiswick High Road, London, England, W4 5YE, U.K. and its successors and assigns.
- 1.2. The “Customer” means the person or firm who purchases the Products from the Company.
- 1.3. “Contract” means the contract between the Company and the Customer for the sale and purchase of Products in accordance with these Terms and Conditions and Special Conditions (if applicable).
- 1.4. “Delivery Location” has the meaning given in clause 6.2.
- 1.5. “Incoterms” means the latest edition of Incoterms published by the International Chamber of Commerce at the time any order is accepted by the Company.
- 1.6. “Interest” means the HSBC UK base rate prevailing during the period plus 2% per annum.
- 1.7. “Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.8. “Products” means any products and/or materials supplied by the Company to the Customer under the Contract.
- 1.9. “Specification” means any specification for Products that is agreed in writing by the Company and the Customer.
- 1.10. “Terms and Conditions” means these terms and conditions of sale, as amended from time to time in accordance with clause 17.10.

2. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions apply to all arrangements between the parties for the Company to supply and the Customer to buy products and/or materials unless the parties agree otherwise in writing. If any specific terms and conditions (including Specification) are agreed between the parties in writing in relation to a Contract (the “**Specific Conditions**”), both of these Terms and Conditions and the Specific Conditions shall form part of the Contract. Where there is an inconsistency between any provision of these Terms and Conditions and any provision of the Specific Conditions, the provision of the Specific Conditions shall prevail.

3. ORDERS

- 3.1. A quotation by the Company does not constitute an offer and the Company may withdraw or revise a quotation at any time.

- 3.2. The Customer may place an order by any means acceptable to the Company, including but not limited to by way of the Company's customer services department or through EDI, provided in each case that the order will not be deemed to be accepted by the Company and no Contract will be formed until the Company, at its discretion, issues a written acceptance of the order.
- 3.3. The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Company which is not expressly set out in the Contract.
- 3.4. Any drawings, descriptions, serving suggestions, specifications, samples or other information contained in any materials or information provided by the Company to the Customer are produced for the sole purpose of providing an approximate idea of the Products referred to in them and such materials and information shall not form part of any Contract and the Company shall not be liable for any inaccuracy or deviation from them.
- 3.5. The Company may from time to time supply Products from a related or associated company of the Company and the parties agree that the provisions of a Contract are also for the benefit of, and are intended to be enforceable by such related or associated companies.

4. TITLE & RISK

- 4.1. Subject to clause 4.2, the risk of loss or damage to the Products shall pass to the Customer upon delivery to the Delivery Location or deemed delivery, in accordance with clause 6.
- 4.2. The Company shall not be responsible for any loss or damage to the Products sustained whilst on the Delivery Location, including prior to completion of the delivery or signature of the delivery note, if such loss or damage arises as a consequence of the condition of the Delivery Location or the act, default or omission of the Customer or its representatives.
- 4.3. If the Contract specifies any Incoterm, the terms applied to the Incoterm shall prevail over clause 4.1 and clause 4.2 and the interpretation of the terms shall be in accordance with the Incoterms.
- 4.4. Title in the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of such Products and all other sums which are or which become due to the Company from the Customer on any account.
- 4.5. Until title passes to the Customer, the Customer shall hold the Products on a fiduciary basis as the Company's bailee and:
- (a) maintain the Products in a satisfactory condition, to prevent damage or deterioration to them;
 - (b) store the Products separately from any other goods;
 - (c) keep the Products free from any charge, lien or other encumbrance and store them in such a way so that it is clear that they belong to the Company;
 - (d) keep the Products insured on the Company's behalf for their full price against all risks;
 - (e) shall not transfer the Products to a location or third party which may impede on the Company's ability to recover the Products; and
 - (f) notify the Company immediately if it becomes subject to any of the events listed in clause 9.
- 4.6. Notwithstanding clause 4.5, the Customer may resell or use the Products to which the Company has retained title in the ordinary course of its business provided that the Company must hold the proceeds of such sale on trust for the Company and not mingle such proceeds with other

money or pay them into an overdrawn bank account and shall ensure that such proceeds are at all material times identified as the Company's money.

4.7. If before title in the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored at any time, in order to recover them.

5. PRICE AND PAYMENT TERMS

5.1. The price for the Products will be the price set out in an order from the Customer or if no price is quoted in the order, the price set out in the Company's price list current as at the date of receipt of the order. Prices are quoted exclusive of VAT (or any similar sales tax or any tax that replaces such sales taxes), which will be invoiced to the Customer in addition to the price, if applicable. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Company, the Customer shall increase the sum it pays to the Company by the amount necessary to leave the Company with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

5.2. Where credit is granted by the Company, unless otherwise agreed in writing, all sums must be paid by the Customer within 30 days from the date of invoice. Notwithstanding anything in this clause 5 to the contrary, the Company reserves the right to require that Products which are the subject of any order are paid for by the Customer in cash before the Products are delivered.

5.3. Failure by the Customer to pay by the due date shall entitle the Company to suspend or terminate any or all Contracts with the Customer and/or delivery of all unexecuted or future orders.

5.4. The Company reserves the right at any time in its absolute discretion to demand immediate payment of any account whether due or not and to take legal action to recover the debt and costs.

5.5. If payment is not made in accordance with this clause 5, the Company reserves the right to charge Interest on the overdue balances for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgment or decree against the Customer. In addition, the Customer will pay to the Company on demand an amount equal to all expenses and costs (including legal costs as between solicitor and client) incurred by the Company in connection with the Company recovering or attempting to recover any overdue amount.

5.6. The Company reserves the right in its absolute discretion to refuse to grant credit or to terminate any credit facility previously provided to the Customer.

5.7. The Company may, at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

5.8. The Customer may not withhold payment or make any set-off or deductions from any amount owing to the Company without the Company's prior written consent.

6. DELIVERY

- 6.1. Deliveries of Products to the Customer shall be in accordance with the delivery terms given in the Contract. Unless otherwise provided in the Contract, the price of the Products excludes the costs of delivery which will be paid by the Customer in addition to the price. Time for delivery shall be approximate only and the Company shall not be liable for any loss, cost or damage whatsoever arising out of or as a result of a delay or failure to deliver. Time for delivery shall not be of the essence unless otherwise agreed by the Company in writing.
- 6.2. Delivery of Products shall be made by the Company to a reasonably accessible location at the Customer's premises, or as otherwise agreed between the parties ("Delivery Location"). The Customer shall allow the Company access to such premises and shall ensure that the place of delivery shall have the mechanical means and labour required to take delivery of the Products.
- 6.3. Unless otherwise provided in the Contract, the Products may be delivered in instalments and each such instalment shall be treated as a separate contract.
- 6.4. Unless otherwise provided in the Contract, delivery of the Products shall be deemed to occur upon completion of loading or unloading of the Products at the Delivery Location.
- 6.5. The Company is deemed to have fulfilled its obligations even though the quantity delivered may be up to ten per cent less than that specified in the Contract. The Customer shall only be required to pay for the actual quantity delivered if the provisions of clause 7.1 is complied with.
- 6.6. If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery then the products will be deemed to have been delivered when the Company is willing and able to deliver the Product and without prejudice to any other right or remedy available to the Company, the Company may do one or more of the following:
- (a) charge the Customer the cost of carriage of the refused delivery both to and from the Delivery Location, in addition to the Company's administration and other charges incurred as a result of the Customer's failure or delay to take delivery; and
 - (b) charge the Customer the full cost price of the Products and a sum in respect of its loss of profit provided that the Company shall use its reasonable endeavours to mitigate such loss.
- 6.7. The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment.
- 6.8. The Customer shall be liable to pay for all customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Location is located.
- 6.9. If a Contract specifies any Incoterm, with respect to the Contract, the terms applied to the Incoterm shall apply. Where there is an inconsistency between the terms applied to the Incoterm and any provision of this clause 6, the terms applied to the Incoterm shall prevail. The interpretation of the terms shall be in accordance with the Incoterms.
- 6.10. Unless otherwise provided in the Contract, where the Products are delivered in pallets, the Customer shall, promptly upon the Company's request, return the pallets to the Company or the pallet suppliers who the Company appoints.

7. ACCEPTANCE AND CLAIMS PROCEDURE

7.1. The Customer must, within 24 hours of the time of delivery, give the Company written notice of short delivery. The Customer must give the Company written notice of rejection on account of any defect in the Products within 24 hours of the time of delivery (if the defect would be apparent on reasonable inspection) or within 24 hours of discovery (if the defect would not be apparent on reasonable inspection). The Customer must retain defective Products for inspection and collection, for a period of seven days. Credit will only be granted by the Company if the provisions of this clause 7.1 are complied with.

7.2. If the Customer fails to give notice as specified in clause 7.1, the delivery of the Products shall conclusively be presumed to comply with the terms of the Contract and the Company shall have no liability to the Customer with respect to that delivery.

8. CANCELLATION OF CONTRACT

The Customer may not cancel or amend any order without the written consent of the Company after the order is accepted by the Company in accordance with clause 3.2. The Company reserves the right upon its consent being given to a cancellation to levy a cancellation charge of not less than 20% of the price of the Products which are the subject of the order to cover the Company's losses arising from the cancellation.

9. CUSTOMER INSOLVENCY / BREACH

In the event that:

- (a) the Customer makes any voluntary arrangement with its creditors, proposes to enter into a company voluntary arrangement, enters into administration, is unable to pay its debts as they fall due, makes application to a court to suspend enforcement action against it, goes into liquidation (in the event that the Customer is a company) or becomes insolvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Customer is an individual or firm), or if the equivalent occurs under any jurisdiction; or
- (b) an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Customer; or
- (c) the Customer suspends any payments of its debts or ceases, or threatens to cease, to carry on business;
- (d) the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;
- (e) the Customer fails to pay any amount due under any Contract on the due date for payment; or
- (f) the Customer is in material breach of the terms of any Contract (other than failure to pay any amounts due under any Contract),

then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to terminate all Contracts or suspend any further deliveries under any Contract without any liability to the Customer and if the Products have been delivered but not paid for, the price for the Products so delivered shall become immediately payable notwithstanding any previous agreement to the contrary.

10. WARRANTIES

10.1. The Company warrants that all Products shall comply with the food safety requirements of the Food Safety Act 1990 (if applicable) and all applicable UK legislation from time to time in force.

10.2. All other representations or warranties, whether express or implied by law, statutory or otherwise, are, to the fullest extent permitted by law, expressly excluded.

11. LIMITATION OF THE COMPANY'S LIABILITY

11.1. Subject to clause 11.3, the Company limits its liability to the maximum extent permitted by law as follows:

- (a) in respect of consumable Products, the Company's liability shall be limited to Products consumed up to and including the "Best before" or "Use by" date notified by the Company in respect of the relevant Product, where applicable; and
- (b) in respect of any Product supplied by the Company under the Contract, the Company's entire liability shall be limited at its option to (a) replacing the whole or any part of any Products found to be damaged or otherwise defective; or (b) refunding or crediting the purchase price or a pro rata portion of the purchase price of the Products of which the defective Products form part.

11.2. Subject to clause 11.3, the Company shall have no liability for any loss or damage suffered by the Customer or any other person:

- (a) as a consequence of any defect in any Product caused by abnormal or unreasonable conditions of storage, treatment or handling or any negligence or wrongful act on the part of the Customer or its employees or agents;
- (b) for claims for defects or for short delivery unless the provisions of clause 7 have been complied with;
- (c) for any claim made by a third party more than one month before the date upon which a claim by the Customer is received by the Company;
- (d) for any loss of profit, loss of sale, loss of goodwill, loss of reputation; loss of customers and any indirect or consequential losses caused by the Company's negligence or other wrongful act on the Company's part or that of its employees or agents or otherwise; or
- (e) for any failure by the Company to perform any of its obligations in any Contract caused by circumstances beyond its reasonable control.

11.3. Notwithstanding anything else in these Terms and Conditions to the contrary, the Company's liability in respect of death or personal injury caused by the Company's negligence or fraud or fraudulent misrepresentation of the Company shall not be limited.

12. Compliance with laws and regulations

The Customer shall be responsible for the observation of the legal requirements of the country of delivery including any legal requirements relating to the packing and labelling.

13. INTELLECTUAL PROPERTY RIGHTS

13.1. All Intellectual Property Rights attaching to the Products shall remain at all times the property of the Company. The Customer shall acquire no rights attaching to the Products, except as expressly provided for in these Terms and Conditions.

13.2. The Customer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Company website(s) or any other Company material. The Customer may not use the Company website or other Company materials or content for any commercial purpose; including the collection and use of any listings, descriptions, prices, make any derivative or commercially exploitative use of the website(s) or its content, download or copy account

information, use any data mining, robots or similar data gathering and extraction tool without the explicit written consent of the Company. Any unauthorised use by the Customer terminates any prior permission which has been granted by the Company.

13.3. Where the Company designs the Products pursuant to a commission from the Customer, then any copyright, design right or other Intellectual Property Rights in such Products shall vest in the Company on creation. The Customer hereby assigns to the Company absolutely all its right, title and interest in and to such Products (if any) and the Customer shall do any acts and execute any documentation required by the Company to secure vesting of such rights in the Company.

13.4 The Customer shall indemnify the Company against each loss, liability and cost which the Company incurs as a result of complying with any requirements or specifications of the Customer which directly or indirectly result in any infringement or alleged infringement of Intellectual Property Rights or other rights of any third party.

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or reduce the volume of Products ordered by the Customer or to cancel any Contract without liability to the Customer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, any failure or delay on the part of suppliers of the Company, any strike, lock-out or other industrial action, fire, explosion, flood, epidemic, pandemic, closure of motorways or other roads leaving no alternative route, unusually severe weather conditions or unusually severe traffic congestion which could not reasonably have been anticipated leaving no alternative route, loss of power or telecommunications systems or computer failure or breakdown, change in a law or governmental order, rule, regulation or direction, any action taken by a governmental or public authority, any failure to grant necessary license or consent, increased costs in obtaining workers, goods or transport.

15. CONFIDENTIALITY

15.1. The Customer undertakes that it shall not at any time disclose any confidential information concerning the Products, business, affairs, customers, suppliers, pricing of the Company to any third party whatsoever.

15.2. The Customer may disclose the Company's confidential information (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations to the Company under the Contract, provided that such employees, officers, representatives and advisers to whom the Customer discloses such information comply in full with this clause; and (ii) as may be required by law, court order or any government or regulatory authority, provided that the Customer gives as much advance notice of such disclosure to the Company, as possible.

15.3. The Customer shall not use the Company's confidential information for any purpose other than to perform its obligations under the Contract.

16. PERSONAL DATA AND DATA PROTECTION

16.1. The Customer shall comply with all the obligations under all relevant data protection and privacy legislation in force from time to time including but not limited to the following legislation (the "Data

Protection Legislation”) and in particular ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

(a) The General Data Protection Regulation ((EU) 2016/679) (EU GDPR);

(b) The retained EU law of the EU GDPR (UK GDPR);

(c) The UK Data Protection Act 2018; and

(d) The UK Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).

16.2. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with the breach of the Data Protection Legislation by the Customer.

16.3. The Customer shall ensure that all personal data disclosed by the Company to the Customer (the “Company Personal Data”) shall not, without the prior written consent of the Company, be processed for any other purpose than to perform its obligations under the Contract.

16.4. The Customer shall not, without the prior written consent of the Company, disclose any Company Personal Data to the Customer’s agents, partners, sub-contractors or any other third parties (“Agents”). Where the Customer discloses any Company Personal Data to any Agents with the prior written consent of the Company, the Customer shall procure and take all reasonable steps to ensure that the Agents comply with the obligations set out in this clause 16 as if it were the Customer.

17. PRODUCT RECALL

17.1. If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market (“Recall Notice”) it shall immediately notify the Company in writing enclosing a copy of the Recall Notice.

17.2. Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Company and only then in strict compliance with the Company’s instructions as to the process of implementing the withdrawal.

18. ADDITIONAL TERMS

18.1. Failure or delay on the part of the Company in enforcing any provision of a Contract shall not be construed as a waiver of any of the Company’s rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.2. If any provision of the Contract is found by any court, tribunal or other 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.

18.3. The Customer may not assign or transfer any of its rights or obligations under the Contract without the Company’s prior written consent. The Company may assign its rights and obligations under any Contract.

18.4. Any written communication given pursuant to any Contract must be sent by pre-paid first class post to the registered office of the addressee or such other address as may have been notified in writing or e-mailed to customercare@mizkan.co.uk and shall be deemed to have been received by the addressee, if sent by post, two days after the date of posting and if sent by email, at the time of transmission.

18.5. Except as expressly provided in clause 3.5, the parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

- 18.6. The Contract shall be governed by the laws of England and the Company and the Customer agree to submit to the non-exclusive jurisdiction of the English Courts.
- 18.7. The United Nations Convention on the International Sale of Goods shall not apply to any Contract.
- 18.8. In performing its respective obligations under the Contract, the parties shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including but not limited to The Bribery Act 2010, The Modern Slavery Act 2015 and The Criminal Finances Act 2017 (as amended). The Company may immediately terminate the Contract for any breach of this clause by the Customer.
- 18.9. If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.
- 18.10. The signature on behalf of the Customer purporting to sign with the Customer's authority shall bind the Customer and the Customer shall be liable to comply with the terms of the Contract.
- 18.11. The Company reserves the right to amend these Terms and Conditions from time to time by posting updated versions on its website. The amended terms and conditions shall take effect from the time the amended terms and conditions are posted on the website of the Company.