

## STANDARD CONDITIONS OF SALE FOR THE ARLA FOODS GROUP OF COMPANIES

### 1. GENERAL

- (1) In these conditions
- (a) " Company" means Arla Foods Limited;
- (b) " Company's Premises" means the Company's premises printed overleaf or such other premises notified in writing to the Customer from time to time;
- (c) "Conditions" means the Company's standard terms and conditions of sale set out in this document;
- (d) "Contract" means the contract for the sale and purchase of Goods arising from the acceptance by the Company of the Customer's order for Goods;
- (e) "Customer" means the person, firm or company whose order is accepted by the Company;
- (f) "duly authorised representative of the Company" means a representative of the Company whose identity and authority to amend or vary these Conditions has been expressly notified in writing by the Company to the Customer; and
- (g) "Goods" means the goods (including any instalment of the goods) the subject of the Customer's order.
- (2) All prices quoted by the Company are based upon these Conditions and reflect the limitations upon the Company's liability which they contain.
- (3) All offers are accepted and all Goods are sold subject to and upon these Conditions. The Customer shall be deemed to have agreed to these Conditions in relation to all present and future dealings between the parties.
- (4) No conditions of purchase proposed or stipulated by the Customer and no other terms, conditions, warranties, particulars, standards, criteria, specifications and other matters whether written or oral, express or implied shall form part of or be deemed to be incorporated into these Conditions and/or the Contract unless agreed in writing by a duly authorised representative of the Company.
- (5) No agent or salesman of the Company has authority to give any guarantee or warranty on behalf of the Company or to transact business other than on the (unamended) terms of these Conditions.
- (6) All previous representations are to be regarded as superseded by these Conditions and are not to be seen as forming part of the Contract unless confirmed in writing by a duly authorised representative of the Company and the Customer acknowledges that it has not relied on and (save in the case of any fraudulent misrepresentation) waives any claim for breach of such representations which have not been so confirmed in writing.
- (7) Words importing the singular shall unless the context otherwise requires include the plural and vice versa, words importing a gender shall include every gender and all references to persons shall include bodies corporate or unincorporate.
- (8) The headings in these Conditions are for convenience only and shall not affect their interpretation.
- (9) Any reference herein to a statutory provision shall include such provision as from time to time modified or re-enacted and shall include also any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced and shall include any orders regulations instruments or other subordinate legislation made under the relevant statute.
- (10) The Company shall in its absolute discretion be entitled to carry out its obligations under the Contract through any agent or sub-contractor appointed by it from time to time for that purpose.
- (11) The Company shall be entitled to assign in whole or part the benefit (subject to the burden) of the Contract and its rights under these Conditions to any third party. The Contract shall be personal to the Customer and may not be assigned without the prior written consent of the Company.
- (12) No variation or waiver of any of the provisions of the Contract or these Conditions shall be binding unless contained in a single written instrument signed by a duly authorised representative of the Company and the Customer.
- (13) No waiver or forbearance by either the Company or the Customer of a breach by the other of any of these Conditions shall be deemed to be a waiver of any subsequent breach of the same or any other Condition.
- (14) All rights granted to the Company and the Customer under these Conditions shall be cumulative and no exercise by either the Company or the Customer of any of their rights under these Conditions shall restrict or prejudice their exercise of any other right granted by these Conditions or otherwise available to them.
- (15) Any notice given by one party to the other under these Conditions shall be in writing and deemed served if left at or sent by recorded or registered

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post to the Company's Premises or the Customer's principal place of business (as appropriate) and any such notice shall be deemed to have been received on the date it was left at such address or forty eight hours after the date it was posted as the case may be.

- (16) Without prejudice to Condition 1(11) a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or condition of the Contract (including without limitation these Conditions) but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.

### 2. LIMITS OF CONTRACT

- (1) No binding contract is created until an order is accepted by the Company.
- (2) No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation.

### 3. PRICE

- (1) Unless a quotation or tender has been submitted the price of the Goods shall be the price ruling at the date of delivery notwithstanding any price specified in any order or order acceptance.
- (2) Where a quotation or tender has been submitted, unless otherwise stated in writing by a duly authorised representative of the Company, the specified price shall only remain open for acceptance by the Customer within 28 days from the date of such quotation or tender.
- (3) The price of the Goods shall be subject to the addition of Value Added Tax and other taxes (if any) and the cost of any special packaging required by the Customer.
- (4) Any increase in costs or expenses arising from any act or omission or any special requirements of the Customer or any modifications made at the Customer's request may, at the Company's option, be charged to the Customer.
- (5) Prices quoted are subject to revision for errors and omissions at any time without any liability on the part of the Company.

### 4. DELIVERY AND RISK

- (1) Any time or date for the delivery of Goods given by the Company shall be taken as an estimate

made by the Company in good faith but shall not be binding upon the Company either as a term of the Contract or otherwise. Time for despatch or delivery shall not be of the essence unless previously agreed in writing by a duly authorised representative of the Company. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to despatch or deliver within such time or by such date or in consequence of any other delay in despatch or delivery however caused.

- (2) If the Customer collects the Goods delivery shall be deemed to be made at the Company's Premises and the risk in the Goods shall pass to the Customer upon the Goods being loaded on to the delivery vehicle(s) at the Company's Premises.
- (3) If the Company agrees to deliver the Goods:
- (a) delivery shall be made to the address stated on the order or any other address accepted by the Company ("Delivery Address");
- (b) the Customer shall provide the Company with safe and adequate access to the Delivery Address for delivery of the Goods;
- (c) the Company shall be entitled to deliver the Goods to any person whom the Company reasonably believes has authority to accept delivery on behalf of the Customer; and
- (d) the risk in the Goods shall pass to the Customer upon the Goods being unloaded at the Delivery Address.
- (4) If the Company agrees to deliver the Goods and delivers the Goods in bulk containers:
- (a) the Customer shall clearly indicate to the carrier effecting delivery the correct location silo or hopper into which the Goods are to be discharged or otherwise delivered. The Company shall not be liable for any losses damages costs or expenses if through no fault of the Company delivery is made to the wrong location silo or hopper;
- (b) where the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods;
- (c) in the event of persistent failure by the Company to deliver pursuant to calls-off under the Contract the Customer shall be entitled to

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- terminate the Contract on 3 days' written notice to the Company but shall have no other recourse against the Company for any loss or damage arising therefrom whatsoever; and
- (d) the Customer shall pay the demurrage rate (if any) specified in the Contract in the event that the unloading of the Goods is delayed by more than 2 hours after the Goods have arrived at the Delivery Address (except where such delay is caused by the Company's breach of contract or negligence), and the Customer shall indemnify the Company against all losses costs damages and expenses incurred as a result of such delay.
- (5) In the event of short delivery or over delivery the Customer shall not be entitled to reject the Goods or to treat the Contract as repudiated and shall notify the Company of the short delivery or over delivery at the time of delivery or as soon as possible thereafter and provide the Company reasonable access to the Goods to correct any mistake in delivery.
- (6) The Customer must check and sign all delivery notes at the time of delivery the signing of delivery notes or the provision of the Customer's own goods received notes to the Company will constitute acceptance of the Goods delivered within the meaning of Section 35 of the Sale of Goods Act 1979.
- (7) The Customer waives its right to reject part only of a consignment of the Goods under Section 35A of the Sale of Goods Act 1979.
- (8) Without prejudice to Conditions 4(5) and 4(6) the Customer shall be deemed to have accepted the Goods if the Customer has not notified the Company that it has rejected the Goods within 72 hours of delivery.
- (9) The Company shall not in any event be liable for any loss or damage to the Goods occurring after delivery to the Customer.
- (10) The Company may deliver the Goods in instalments and invoice the Customer as if each instalment comprised a separate contract upon the terms of these Conditions. Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- (11) The Company reserves the right to put the Goods, or any portion thereof, into storage at the Customer's risk and expense in the following cases, or in any other comparable circumstances:
- (a) where the Goods are about to be despatched and the Customer notifies the Company that the Customer is or will be unable to accept delivery of the Goods when tendered; or
- (b) where the Customer fails to collect the Goods when ready; or
- (c) where the Customer refuses without good cause to take delivery of the Goods or provide the Company with the information or instructions the Company requires in order to deliver the Goods.
- 5. SAMPLES AND DESCRIPTIONS**
- (1) The tender of samples of the Goods to the Customer and their inspection by the Customer shall not render any sale a sale by sample.
- (2) The Company's specifications, brochures, catalogues, price lists and all descriptions of the Goods contained therein are merely indications of the kind of goods supplied by the Company and no particulars contained in any of them shall bind the Company unless otherwise expressly agreed in writing by a duly authorised representative of the Company.
- (3) The Company reserves the right to make alterations to the design, appearance and specification/recipe and/or the packaging of the Goods and its advertised information concerning such Goods from time to time. Where such alterations are, in the reasonable opinion of the Company, likely to be material, the Company shall give the Customer prior notice of such alterations.
- 6. PAYMENT AND CREDIT**
- (1) Subject to any other terms of payment agreed in writing by a duly authorised representative of the Company, all accounts shall be paid in full without any deductions or set-off at the Company's Premises within seven days from the date of invoice time to be of the essence. If the Customer fails to pay such amount by that time the whole of the indebtedness of the Customer to the Company shall immediately be due and payable. Cheques and money orders shall be made payable to or to the order of the Company. Only the Company's official receipt will be treated as valid.
- (2) If the Customer tenders payment by a cheque which is not honoured for any reason the Customer shall indemnify and hold the Company harmless against any bank charges incurred by the Company in respect of such cheque and in any event the Company shall be entitled to charge the Customer the sum of £5 (or such other sum as the Company may notify to the Customer) as compensation for each

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such cheque the Company has to deal with, which amounts shall at the discretion of the Company either be added to the indebtedness of the Customer to the Company or payable by the Customer forthwith upon demand.

- (3) Unless the Customer specifies in writing, at the time a payment is made to the Company, to which account and/or invoice such payment is to be allocated, the Company may at its discretion allocate any such payment to any account or invoice relating to the Customer.
- (4) If the Company does not receive payment from the Customer by the due date the Company shall be entitled (without prejudice to any other right or remedy it may have) to:
  - (a) suspend all further deliveries of Goods until payment is received; and/or
  - (b) repudiate the Contract in which case the Company shall be entitled to sell any Goods comprised in the Contract still in its possession and the Customer shall indemnify the Company for any loss of profit occasioned thereby; and/or
  - (c) the Company shall be entitled to charge interest on the monies owing by the Customer to the Company at the statutory rate of interest payable on late payments from time to time under The Late Payment of Commercial Debts (Interest) Act 1998 calculated on a daily basis from the date of default until the date of payment of all overdue monies.
- (5) Notwithstanding Condition 6(1) the Company shall without prejudice to its other rights have the right by notice in writing to the Customer to vary any credit terms offered to the Customer and/or demand immediate payment of all monies due from the Customer to the Company for any Goods delivered at any time PROVIDED that in any event if the Customer ceases to purchase any Goods from the Company for any reason or the Company ceases to supply any Goods to the Customer for any reason the whole amount of any outstanding monies shall fall due for immediate payment.
- (6) The Customer shall indemnify and hold the Company harmless against all costs (including legal costs on a full indemnity basis) howsoever incurred by the Company in the course of recovering any monies not paid by the Customer for any reason on the due date.

### 7. DISCOUNTS AND SET-OFF

- (1) No retrospective/turnover discounts will be given to the Customer unless all monies due are paid in accordance with Condition 6.
- (2) The Company may (but is not obliged) at any time (without notice to the Customer) set off any

liability of the Company to the Customer against any liability of the Customer to the Company (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency or its denomination) and may for such purpose convert or exchange any currency. Any exercise by the Company of its rights under this Condition shall be without prejudice to any other rights or remedies available to the Company under the Contract or otherwise.

### 8. PASSING OF PROPERTY

- (1) The Goods shall remain the sole and absolute property of the Company until such time as the Company shall have received in cash or cleared funds payment in full of the agreed price together with the full price of any other goods the subject of any other contract with the Company.
- (2) Until such a time as the Customer becomes the owner of the Goods, the Customer acknowledges that the Customer is in possession of the Goods solely as fiduciary agent and bailee for the Company and the Customer will properly store, protect and insure them and whenever reasonably possible keep them on its premises separately from the Customer's own goods or those of any other person and mark them in such a manner which makes them readily identifiable as the goods of the Company.
- (3) The Customer's right to possession of the Goods shall cease if it shall fail to pay to the Company on the due date any sum payable hereunder, or shall convene a meeting of its creditors, or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986, or if a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if a trustee, receiver or administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer, or if a petition is presented or a meeting is convened for the purpose of considering a resolution, or other steps are taken, for the winding up of the Customer, or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if the Company reasonably believes that any of the foregoing events is likely to occur and notifies the Customer accordingly.
- (4) Subject to the terms hereof the Customer is licensed by the Company to sell or use the Goods in the ordinary course of its business, subject to the express condition that the Customer shall account to the Company for the

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entire proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall hold all such proceeds thereof in trust for the Company and not mingle such proceeds with other monies or pay them into any overdrawn bank account and such proceeds shall be at all times identifiable as the Company's monies and in the case of tangible proceeds be properly stored protected and insured.

(5) If the Customer has not received the proceeds of any such sale it will, upon being called upon so to do by the Company, within seven days thereof, assign to the Company all rights against the person or persons to whom the Customer has supplied the Goods.

(6) Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company 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 repossess the Goods.

(7) 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 Company but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

### 9. **SUSPENSION OR CANCELLATION OF DELIVERIES**

If the Customer's right to possession of the Goods shall cease in accordance with Condition 8(3), the Company may, without prejudice to its other rights, demand immediate payment by the Customer of all unpaid amounts and suspend further deliveries and cancel all contracts between the Company and the Customer without any liability attaching to the Company in respect of such suspension or cancellation and debit the Customer with any loss sustained thereby.

### 10. **CUSTOMER'S UNDERTAKING**

(1) The Customer shall at all times comply with any instructions as to storage contained in the Company's specifications relating to the Goods or contained on the packaging or labels of the Goods and comply with all legislation relating to the Goods (including without limitation the storage, packaging, labelling and supply of the Goods to its own customers) and shall not use or re-sell or otherwise supply or offer to supply to third parties any of the Goods after their "use by" or "best before" dates have expired.

(2) The Customer undertakes to indemnify and keep the Company indemnified against any liability, claim, damage, loss, cost or expense that the Company may incur arising out of the Customer's breach of this Condition 10.

### 11. **INTELLECTUAL PROPERTY RIGHTS**

(1) The Customer shall not use or sell the Goods in such a manner so as to infringe any rights of the Company or any third party and in particular shall not alter, obscure, conceal, remove or otherwise interfere with any labelling or markings or packaging on the Goods.

(2) The Customer acknowledges that all patents, registered designs, design rights, copy rights, trademarks and any other or similar rights in the Goods (including their packaging) shall be and remain vested in the Company (vis á vis the Customer).

(3) Where the Goods are supplied in any packaging or containers designed by the Customer or which are marked in accordance with the Customer's instructions/requests, the Customer warrants that such packaging, containers and markings will not infringe any third party's intellectual property rights.

(4) The Customer undertakes to indemnify and keep the Company indemnified against any liability, claim, damage, loss, cost, or expense that the Company may incur arising out of the Customer's breach of the warranty contained in Condition 11(3) and/or any other breach of this Condition 11.

### 12. **FORCE MAJEURE**

If the performance of the Contract by the Company shall be delayed or prevented by any circumstances or conditions beyond the reasonable control of the Company including (but without prejudice to the generality of the foregoing) war, industrial dispute, strike, lock-out, riot, fire, storm, Act of God, accident, non-availability or shortage of materials or labour, any statute, rule, bye-law, order or requisition made or issued by any legislature, Government or Government Department, local or other duly constituted authority, then the Company shall without liability to the Customer have the right at its sole discretion either to suspend further performance of the Contract until such time as the cause of the delay or prevention shall no longer be present or to be discharged from further performance under the Contract. If the Company decides to discharge itself from further performance under the Contract the Customer shall thereupon pay the Contract price less a reasonable allowance for what has not been performed by the Company.

### 13. **SEVERANCE**

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(1) While the restrictions and exclusions contained in these Conditions of the Customer's rights whether express or implied by common law, statute, custom of the trade, course of dealing or otherwise, are considered to be fair and reasonable having regard to the circumstances known to and in the contemplation of the parties at the date hereof, it is recognised that certain of the restrictions and exclusions may become unfair and unreasonable due to unforeseen circumstances and accordingly it is hereby agreed that if any of such restrictions and exclusions shall be adjudged to be void but would be valid if part of the wording thereof were deleted the said restriction or exclusion shall apply with such modification as may be necessary to make it valid and effective.

(2) If any of these Conditions shall be deemed void for any reason whatsoever, but would be valid if part of the wording thereof were deleted the said Condition shall apply with such modification as may be necessary to make it valid and effective.

### 14. EXPORT TERMS

(1) In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract relating to the Goods.

(2) Where the Goods are supplied for export from the United Kingdom the provisions of this Condition 14 shall (subject to any special terms agreed in writing between the Customer and a duly authorised representative of the Company) apply notwithstanding any provision of these Conditions.

(3) The Customer shall be responsible for complying with any legislation or regulations governing the packaging and labelling of the Goods and their importation into the country of destination and for the payment of any duties thereon.

(4) Unless otherwise agreed in writing by a duly authorised representative of the Company the Goods shall be deemed to be delivered FOB at the Company's Premises.

(5) Except where the Company agrees to deliver the Goods to the Customer the Customer shall be responsible for arranging for inspection of the Goods before shipment. In such circumstances, the Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or

in respect of any damage during transit.

(6) Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company, or if agreed in writing by a duly authorised representative of the Company on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Company at such branch of the Company's bankers in the United Kingdom as may be specified by the Company in the bill of exchange.

### 15. LEGAL CONSTRUCTION

These Conditions and the Contract shall be construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts.

### 16. THE COMPANY'S WARRANTY AND LIABILITY

(1) Subject to the conditions set out in this Condition 16 the Company warrants that the Goods shall at the time of delivery conform with their specification (if any), The Food and Environment Protection Act 1985, The Materials and Articles in Contact with Food Regulations 1987 and The Food Safety Act 1990.

(2) Except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), the Company's liability, in respect of Goods supplied to the Customer, is limited as provided in these Conditions and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

(3) Where the Goods are sold to a consumer (as defined in the Unfair Contract Terms Act 1977) their statutory rights are not affected by anything in these Conditions.

(4) Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 72 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and in any event before the expiration of the "use by" or "best before" dates applicable to such Goods. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall

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have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- (5) In the case of any claim that the Goods are defective or otherwise fail to meet specification, at the Company's request, the Customer shall by such means as the Company may reasonably specify forward to the Company a sample of the Goods in question together with details of the consignment in which the Goods were contained. In all such cases the Customer shall immediately cease to use all similar Goods received under the same consignment and the Customer shall immediately give to the Company all facilities which it reasonably requires to check (where appropriate) that the Goods have been stored by the Customer under the correct conditions and to check any tests or assessments of the Goods made or to be made by the Customer.
- (6) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace such Goods free of charge or, at the Company's sole discretion, credit the Customer with the price of such Goods but the Company shall have no further liability to the Customer.
- (7) Any claim by the Customer that there has been no delivery or a shortfall in the quantity of the Goods delivered must be notified to the Company within 24 hours from the date of delivery and if the Company has failed to deliver all or part of the Customer's order for the Goods for any reason other than a cause beyond the Company's reasonable control or the Customer's fault the Company shall be entitled at its sole discretion either to supply additional Goods to the Customer to make up such shortfall, or credit the Customer with the price of such Goods but the Company shall have no further liability to the Customer.
- (8) In default of compliance with the provisions of this Condition 16 all claims by the Customer (other than claims arising from the Company's negligence and resulting in personal injury or death) are hereby expressly agreed to be barred and any damage suffered by any Goods shall be deemed to have occurred following delivery unless the contrary is proved by the Customer to the reasonable satisfaction of the Company.
- (9) Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any

representation (unless fraudulent), or any implied warranty, condition, or other term, or any duty at common-law, or under the express terms of the Contract, for any loss or damage (whether for loss of profit, loss of business, loss of contracts, loss of goodwill or otherwise), or for any indirect, special or consequential loss or damages, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Company whether under the Contract or in tort or otherwise shall not exceed the price of the Goods, except as expressly provided in these Conditions.

- (10) If a Court finds that it would not be reasonable for the Company to rely upon the exclusions or limitations contained in these Conditions it is expressly agreed that the Company's liability in respect of any claim in any event shall be limited to such sum as the Company may by reasonable steps be able to obtain under any insurance it may have which covers the Customer's claim.