

Geary's Bakeries Limited – Terms of Purchase

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Terms.

1.1 Definitions:

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

"**Contract**" means the contract between the Customer and the Supplier for the supply of Goods in accordance with these Terms, the Purchase Order and, if applicable, the Framework Agreement.

"**Control**" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

"**Customer**" means Geary's Bakeries Limited registered in England and Wales with company number 01877775.

"**Finished Product**" means any product sold by the Customer to its own customers which incorporates some or all of the Goods.

"**Framework Agreement**" means any framework supply agreement entered into between the Customer and the Supplier in force on the Commencement Date.

"**Goods**" means the goods (or any part of them) set out in the Purchase Order.

"**Goods Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier (including where applicable by inclusion in the Framework Agreement) for the applicable product code(s) relating to the Goods.

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

"**Mandatory Policies**" means the Customer's business policies listed in the Approved Supplier Form.

"**Purchase Order**" means the Customer's order for the supply of Goods, as set out in the Customer's purchase order form.

"**Supplier**" means the person or firm from whom the Customer purchases the Goods.

"**Terms**" means these terms and conditions as amended from time to time.

1.2 Interpretation:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1 The Purchase Order constitutes an offer by the Customer to purchase Goods from the Supplier in accordance with these Terms.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Purchase Order;

2.2.2 3 Business Days passing without rejection of the Purchase Order by the Supplier; or

2.2.3 any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Terms.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond entirely with their description and any applicable Goods Specification (and the Supplier undertakes that no deviation of any nature whatsoever from the Goods Specification shall occur without the written approval of the Technical Manager of each party);

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 where the Goods are not intended for incorporation into a Finished Product, be free from defects in design, materials and workmanship and remain so for 12 months after delivery (or such other period as is agreed in writing between the parties);

3.1.4 where the Goods are intended for incorporation into a Finished Product, be free from defects, contamination, adulteration, allergens (save those allergens, if any, expressly permitted by the applicable Goods Specification) and pests and remain so for the shelf-life as set out in the applicable Goods Specification; and

3.1.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer may inspect and test the Goods at any time after delivery during the shelf-life of the Goods as set out in the applicable Goods Specification (where applicable). The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

Geary's Bakeries Limited – Terms of Purchase

- 3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at paragraph 3.4, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4. DELIVERY OF GOODS**
- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in perfect condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3 it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Purchase Order or, if no such date is specified, then within 3 Business Days of the date of the Purchase Order;
- 4.2.2 to the Customer's premises or such other location as is set out in the Purchase Order or as instructed by the Customer before delivery (**Delivery Location**); and
- 4.2.3 during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of all of the following: (i) unloading of the Goods at the Delivery Location; (ii) initial inspection of the Goods by the Customer at the Delivery Location; and (iii) signature of the delivery note by a representative of both the Customer and the Supplier.
- 4.4 If the Supplier delivers more or less than the quantity of Goods ordered, the Customer may reject the Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in paragraph 6.1 or 6.3 (as applicable) in respect of all of the Goods.
- 4.6 Title in the Goods shall pass to the Customer on the earlier of payment for the applicable Goods and completion of delivery. Risk in the Goods shall pass to the Customer on completion of delivery.
- 5. PRODUCT RECALLS AND WITHDRAWALS**
- 5.1 In this clause the following terms shall have the following meanings:
- 5.1.1 "**Product Withdrawal**" means a recall of Finished Products which occurs whilst the Finished Products are at one of the Customer's manufacturing sites;
- 5.1.2 "**Product Recall**" means a recall of Finished Products after their onward delivery to the retailer or other onward customer of the Customer;
- in each case, where such recall is attributable in whole or in part to any failure by the Goods to comply with this Contract.
- 5.2 Where a Product Withdrawal occurs, the Supplier shall pay to the Customer:
- 5.2.1 any and all production costs and expenses incurred by the Supplier in respect of the applicable Finished Products; and
- 5.2.2 an administrative fee determined by the Customer acting reasonably, having regard to the nature and extent of additional costs, difficulties, expenses and other interference to the Customer's business caused by the Product Withdrawal.
- 5.3 In the event of a Product Recall:
- 5.3.1 any financial or other costs, expenses or liabilities imposed on the Customer by the applicable retailer/onward customer or otherwise experienced by the Customer;
- 5.3.2 any and all production costs and expenses incurred by the Supplier in respect of the applicable Finished Products; and
- 5.3.3 an administrative fee determined by the Customer acting reasonably, having regard to the nature and extent of additional costs, difficulties, expenses and other interference to the Customer's business caused by the Product Recall.
- 6. CUSTOMER REMEDIES**
- 6.1 If the Supplier fails to deliver the Goods by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.2 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party;
- 6.1.4 to require a refund from the Supplier of sums paid in advance for Goods that it has not delivered;
- 6.1.5 to recover from the Supplier an administrative charge of £60; and
- 6.1.6 to claim damages from the Supplier for any additional costs, loss or expenses (including any production costs or losses) incurred by the Customer which are in any way related to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in paragraph 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier an administrative charge of £60;

Geary's Bakeries Limited – Terms of Purchase

- 6.2.6 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- 6.2.7 to claim damages from the Supplier for any additional costs, loss or expenses (including any production costs or losses) incurred by the Customer which are in any way related to the Supplier's failure to comply with such undertakings.
- 6.3 These Terms shall extend to any repaired or replacement goods supplied by the Supplier.
- 6.4 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.
- 7. CUSTOMER'S OBLIGATIONS**
- The Customer shall provide such necessary information for the supply of the Goods as the Supplier may reasonably request.
- 8. CHARGES AND PAYMENT**
- 8.1 The price for the Goods:
- 8.1.1 shall be the price set out in the Purchase Order (or, if applicable, the price set out in the Framework Agreement for such Goods); and
- 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.2 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.
- 8.3 In consideration of the supply of Goods by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the end of the calendar month in which a correctly rendered invoice is received by the Customer, to a bank account nominated in writing by the Supplier.
- 8.4 All amounts payable by the Customer under the Contract are inclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**), which will be set out in the applicable Purchase Order.
- 8.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this paragraph will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the date 7 days after the dispute is resolved until payment.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in supplying the Goods, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.7 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this paragraph shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 8.8 Where the Customer and Supplier enter into any rebate or similar arrangement, whether under a Framework Agreement or otherwise, the terms of that rebate shall (to the extent applicable) be incorporated into this Contract.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual, transferrable, sub-licensable and irrevocable licence to use and modify the Goods for the purpose of receiving and using the Goods and onward supply to the Customer's customers.
- 9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and use any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Goods to the Customer.
- 9.4 The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.
- 10. INDEMNITY**
- 10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods (excluding the Customer Materials);
- 10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered; and
- 10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered.
- 10.2 This paragraph 10 shall survive termination of the Contract.
- 11. INSURANCE**
- 11.1 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 11.2 The Supplier shall immediately notify the Customer upon becoming aware of any material change in its insurance coverage.
- 11.3 Unless otherwise agreed between the parties in writing, each of the public liability and product liability insurance policies of the Supplier shall have a coverage limit of not less than £5m per event.
- 12. CONFIDENTIALITY**
- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by paragraph 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall

Geary's Bakeries Limited – Terms of Purchase

- ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this paragraph 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 13. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**
- 13.1 In performing its obligations under the Contract, the Supplier shall:
- 13.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 13.1.2 comply with the Mandatory Policies.
- 14. DATA PROTECTION**
- 14.1 The following definitions apply in this paragraph 14:
- 14.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 14.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 14.1.3 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 14.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 14.4 Without prejudice to the generality of paragraph 14.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 14.4.1 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- 14.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 14.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 14.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 14.4.4.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- 14.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 14.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 14.4.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 14.4.5 assist the Customer, at no extra cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.4.6 notify the Customer immediately on becoming aware of a Personal Data Breach;
- 14.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 14.4.8 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 14 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 14.5 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.
- 15. TERMINATION**
- 15.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- 15.1.1 for convenience by giving the Supplier not less than 3 months' written notice.
- 15.1.2 with immediate effect by giving written notice to the Supplier if:
- 15.1.2.1 there is a change of Control of the Supplier;
- 15.1.2.2 the Supplier commits a breach of paragraph 13;
- 15.1.2.3 the Supplier commits a material breach of any term of the Contract which breach is irredeemable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- 15.1.2.4 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, obtaining a moratorium, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on

Geary's Bakeries Limited – Terms of Purchase

- business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 15.1.2.5 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 15.1.2.6 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 16. CONSEQUENCES OF TERMINATION**
- 16.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Goods whether or not then complete, and return all Customer Materials.
- 16.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 17. GENERAL**
- 17.1 **Assignment and other dealings.**
- 17.1.1 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 17.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.
- 17.2 **Subcontracting.** The Supplier shall not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 17.3 **Notices.**
- 17.3.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 17.3.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 17.3.1.2 sent by email to the address specified in the applicable Framework Agreement and/or Purchase Order.
- 17.3.2 Any notice shall be deemed to have been received:
- 17.3.2.1 if delivered by hand, at the time the notice is left at the proper address or, if this time falls outside business hours in the place of receipt, when business hours resume;
- 17.3.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 17.3.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- 17.3.3 This paragraph does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision of the Contract is deemed deleted under this paragraph 17.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. For the avoidance of doubt, where a Framework Agreement exists, this clause 17.7 is without prejudice to that Framework Agreement.
- 17.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.9 **Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 17.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.