

Terms and conditions

1.1 These terms and conditions supersede all other terms and conditions previously issued by Sunburst Snacks Limited (“the Company” or “Sunburst”) and apply to the exclusion of all other terms and conditions (including any other terms or conditions which the Customer (as defined below) purports to apply under any order or other document). These terms and conditions apply to the sale and supply of goods (“Goods”) by the Company to the Customer and no other terms or conditions shall apply. The Company reserves the right at its sole discretion to amend these terms and conditions at any time.

1.2 These terms and conditions apply to all of the Company’s sales and any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company. For the avoidance of doubt no member of staff of the Company is authorised to vary these terms and conditions either orally or in writing.

2 Customer shall mean any individual, firm, partnership, limited company, unincorporated association, trade association or other person or entity which buys any Sunburst product.

3 Credit accounts

3.1 The Company reserves at all times the right to refuse, in its absolute discretion, to supply Goods on credit or otherwise to the Customer and shall not be required to provide any reason for the refusal to supply such Goods.

3.2 Credit accounts will be opened, subject to such references as the Company may, in its absolute discretion, require and the Company will notify the Customer of the credit terms (if any) granted to the Customer. The Company reserves the right to withdraw credit facilities at any time without giving a reason. The Company may, in its absolute discretion, require guarantees or other security before supplying Goods or services on credit.

4 Prices

If a ‘price package’ is offered to the Customer, the placing of an order by the Customer constitutes agreement by the Customer to the price package, any minimum order volume requirements or minimum delivery charges and credit terms offered to it by the Company. All prices, discounts, minimum delivery charges and minimum order requirements and rates of VAT are subject to alteration without notice and in the event of such alteration the price charged will be that applicable at the date of delivery, including any charges raised for orders below the minimum order quantity.

5 Orders

5.1 Each order placed by the Customer constitutes an offer by the Customer to purchase the Goods in accordance with these terms and conditions and subject to any minimum order quantities as the Company may from time to time at its sole discretion determine. The Company reserves the right, at its sole discretion, to accept orders below the stated minimum order quantities but shall be entitled to impose a minimum delivery charge against such orders.

5.2 The Company shall be free to accept or reject each order placed by the Customer and will indicate its acceptance either expressly or by its conduct to the extent it delivers some or all of the Goods ordered.

6 Delivery

6.1 The Company shall arrange for the delivery of the Goods to the Customer and the Customer hereby irrevocably authorises the Company and its representatives to enter upon the Customer’s premises for the purpose of delivering the Goods. Delivery of the Goods shall be completed on the Goods’ arrival at the Customer’s premises. Any levy, tolls, fees or congestion charges reasonably incurred by the Company in performance of the delivery and subsequent return journey shall be reimbursed by the Customer and shall be due on the date of payment to the Company in accordance with the credit terms granted in respect of the Goods delivered.

6.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall have no liability to the Customer for any delay in delivery of the Goods.

6.3 At the time of delivery a copy invoice/delivery note shall be signed by the Customer or by such other person appearing to have authority to sign on behalf of the Customer and the copy invoice/delivery note shall be conclusive evidence of delivery and acceptance of the number of cartons/outers delivered.

6.4 Claims for shortages, damaged (where such damage is reasonably apparent on inspection of the Goods) or incorrect Goods must be notified to the Company in writing by the end of the Company’s next working day (meaning any day other than a Saturday, Sunday or public holiday during which clearing banks are open for non-automated business in London). Any liability of the Company for shortages, damaged or incorrect Goods, or in respect of non-delivery of Goods, shall be limited to replacing the Goods or, in the case of non-delivery, delivering replacement goods of similar description and quality within a reasonable time or issuing a credit note in respect of such Goods against any invoice raised for such Goods.

7 Returns

No Goods which are accepted by the Customer except for designated Sale or Return items may be returned for credit or replacement without the prior written consent of the Company.

8 Payment

8.1 The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods from time to time.

8.2 The Customer shall make payment to the Company in accordance with such credit terms as are granted to the Customer by the Company in default of which all discounts on overdue invoices shall be disallowed;

8.3 Interest shall be payable on all accounts due and unpaid (from the date when payment is due until the date when the Company receives payment in full) at the current rate of statutory interest as prescribed pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 or any order made thereunder or statutory modification enactment thereof.

8.4 The Customer shall pay all amounts due in respect of the Goods in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company shall be entitled to set off in full any amounts owed to it by the Customer from any sums owed by it to the Customer.

8.5 The Customer may, with the prior written approval of the Company, be permitted to make payments by debit or credit card, subject to such additional charges and terms as may be applied by the Company in its sole discretion and notified to the Customer from time to time.

8.6 The Company may in its sole discretion take any steps available to it to recover all amounts due to it from the Customer, including pursuing such debts through court proceedings. The Company shall be entitled to recover all costs and expenses incurred in recovering all amounts due to it by the Customer.

8.7 The Customer will notify the Company in writing of any change of its status as disclosed in the Account Application, for example the addition or retirement of a partner, a change of name or marital status, the incorporation of a limited company, or any other change as may limit or modify the liability or the capacity of the Customer named on the Account Application to enter into a contract with the Company for the supply of Goods and services: in default of which the Customer completing the Account Application shall remain liable to the Company for the price of all Goods (including VAT) supplied.

9 Retention of title

9.1 Risk in the Goods shall pass to the Customer on delivery in accordance with clause 6.1. Notwithstanding delivery and the passing of risk, the Goods shall remain the sole and absolute

property of the Company as legal and equitable owner until such time as one of the following events occurs:

9.1.1 the Company is in receipt of the full price of the Goods in cleared funds and there are no amounts outstanding from the Customer in respect of other Goods supplied by the Company; or

9.1.2 the Customer sells the Goods in accordance with clause 9.4 below.

9.2 While title in the Goods remains with the Company under this Agreement, the Customer agrees that:

9.2.1 it shall keep the Goods properly housed and protected and shall store them separately from its own Goods or the goods of any other person and in such a manner which makes them readily identifiable as the property of the Company;

9.2.2 it shall at its own expense insure and keep insured all Goods in its possession and control against all risks which a prudent trader in Goods would insure against with a reputable insurance company and shall, if the Company so requests, cause the Company’s interest to be noted on the policy or policies of insurance which shall be made available to the Company for inspection; and

9.2.3 it shall hold the Goods in a fiduciary capacity as bailee for the Company.

9.3 Before title in the Goods has passed from the Company, and without prejudice to any other rights the Company may have, the Company shall have the right (immediately upon (a) the occurrence of an event of default (as defined in clause 9.6 below) or (b) the Company serving notice under clause 9.5 revoking the Customer’s authority to sell the Goods, but not otherwise) to recover and re-sell the Goods (or any of them) and the Customer hereby irrevocably authorises the Company and its representatives (without notice) to enter upon the Customer’s premises where the Goods are stored, or are reasonably thought by the Company to be stored, for the purpose of repossessing them and subsequently re-selling them. The Company shall be entitled to recover all of its costs incurred in recovering the Goods under this Clause 9.3.

9.4 Subject to clause 9.5, the Customer shall be entitled to sell the Goods in accordance with the following conditions:

9.4.1 the Goods shall be sold in the ordinary course of business and on commercially reasonable terms but the Customer shall not otherwise deal with, charge, sell, part with possession or otherwise dispose of the Goods until title to the Goods has passed to the Customer in accordance with this Agreement;

9.4.2 the Customer shall sell the Goods as principal and not as agent for the Company; and

9.4.3 the principle of “first in first out” shall apply (or be deemed to apply) so that Goods which are the subject of earlier invoices will be disposed of (or be deemed to have been disposed of) before Goods which are the subject of later invoices.

9.5 The Company may at any time by written or oral notice to the Customer revoke, as to all or any Goods not previously sold by the Customer, the authority given under clause 9.4 entitling the Customer to sell the Goods. Further, the Customer’s authority under clause 9.4 shall immediately cease without notice upon the occurrence of an event of default. In either event the Customer shall not be entitled to sell any Goods without the prior consent of the Company and on terms that the Company shall be legally and beneficially entitled to the proceeds of sale.

9.6 If (i) the Customer fails to pay any sum due to the Company on the due date for payment or (ii) if the Customer is in breach of any obligation hereunder which, if capable of remedy, it fails to remedy within seven days of notice from the Company, or (iii) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator, or administrative receiver appointed over its undertaking or any part thereof, or documents are filed within the court for appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its

directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency of the Customer, or the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade (in these terms and conditions referred to as an "event of default") then all sums outstanding in respect of Goods shall become immediately due and payable and the Company may suspend all future deliveries and exercise its rights under clause 9.3 above.

10 Data protection

10.1 CCTV operates within the Company's premises for the purpose of crime prevention and detection and the apprehension and prosecution of offenders.

10.2 The Company will use the personal data it receives in connection with the Customer to create or update records held by it and all Group Companies (meaning Sunburst Snacks (Holdings) Plc and all of its subsidiaries from time to time) relating to any matter(s), including without limitation for the purpose of product, market or credit analysis, and statistical compilation.

10.3 The Company will make enquiries at any time in relation to the Customer with credit reference agencies which will keep a record of its enquiry whether or not credit is granted. Where credit is granted, the Company may also disclose details about the Customer's account with all Group Companies and the Customer's conduct of the account to such agency or to other agencies or to debt collection agencies. This information may be searched by credit grantors and used and given out in assessing applications for future credit facilities and for debt collection, fraud prevention and other purposes.

10.4 Without prejudice to clauses 10.2 and 10.3 above, the Company will share personal data about the Customer, the Customer's account and the Customer's trading relationship with the Company and with all Group Companies in order that the Company may develop or make offers to the Customer (by mail, telephone, email or otherwise) of products or services. The Customer should advise the Company in writing if the Customer would prefer not to be contacted for these purposes by the Company but remember that this will preclude the Customer from receiving any marketing activity, including details of new lines etc.

10.5 The Company would like to pass the Customer's contact details onto specifically selected third parties for the express purpose of making the Customer aware of services or products that could enhance the Customer's business. The Customer should advise the Company in writing if the Customer would prefer not to be contacted for these purposes by organisations other than the Company and any Group Companies.

10.6 The Customer has a right to ask for a copy of its information (for which the Company is entitled to charge a £10 fee) and to correct any inaccuracies.

11 Compliance with relevant requirements

11.1 The Customer shall:

11.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the Relevant Requirements);

11.1.2 comply with the Company's anti-bribery policy "The Ethical Code of Conduct" (copies of which are available on request) (the Relevant Policy);

11.1.3 have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policy and will enforce them where appropriate; and

11.1.4 promptly report to the Company any request or demand for any undue financial or other advantage of any kind which the Customer becomes aware of in connection with the performance of any obligations by either party pursuant to these terms and conditions.

12 Liability

12.1 The Company supplies products on which barcodes may be printed, but will not be liable for any loss, damage or expense that may be suffered or incurred by the Customer by reason of any absence or inaccuracy in such bar codes or as a result of their incorrect use.

12.2 All implied terms, conditions and warranties howsoever implied, including without limitation those contained in the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982 (as amended) including, inter alia, those relating to satisfactory quality and/or fitness for purpose are hereby excluded to the fullest extent permitted by law in respect of the supply of the Goods and/or any services by the Company to the Customer under this Agreement.

12.3 Nothing in these terms and conditions excludes or limits the liability of the Company:

12.3.1 for death or personal injury caused by the Company's negligence; or

12.3.2 for breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

12.3.3 for defective products under the Consumer Protection Act 1987; or

12.3.4 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

12.3.5 for fraud or fraudulent misrepresentation.

12.4 Subject to clauses 12.2 and 12.4:

12.4.1 the Company's total liability in respect of all claims in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with this Agreement between the Company and the Customer shall be limited to the aggregate price paid by the Customer to the Company in connection with the Goods delivered to the Customer by the Company in the preceding 12 months; and

12.4.2 the Company shall not be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit, loss of business, depletion of goodwill or other pure economic loss in each case whether direct, indirect or consequential, whatsoever and howsoever caused.

13 General

13.1 If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these terms and conditions and the remainder of such provision shall continue in full force and effect.

13.2 Failure or delay by the Company in enforcing or partially enforcing any provision of these terms and conditions shall not be construed as a waiver of any of its rights under these terms and conditions.

13.3 The Company shall have no liability to the Customer under these terms and conditions if it is prevented from, or delayed in, performing its obligations under these terms and conditions or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of P&H or any other party), failure of a utility service or transport network, act of God, war (whether declared or not), terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

13.4 The Customer and the Company agree that these terms and conditions shall not be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to the Agreement.

13.5 These terms and conditions and the documents referred to in them, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of these terms and conditions. The Customer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement, assurance, warranty, understanding, promise or representation of any person (whether made negligently or innocently and whether or not made or given by the Company) which is not set out in these terms and conditions. Any samples, drawings, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract between the Customer and the Company for the sale of the Goods. Each of the parties acknowledges and agrees that nothing in this clause shall operate to limit or exclude any liability for fraud.

13.6 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these terms and conditions without the prior written consent of the Company.

13.7 Any notice required to be served by the Company under this Agreement shall be served by post, fax, email or by hand to such address as the Company has for the time being on its records for the Customer. A notice sent by fax, email or delivered by hand shall be deemed to have been served on transmission or delivery (as the case may be) and any notice sent by post shall be deemed to have been served two days after posting.

14 Applicable law

14.1.1 These terms and any dispute arising out of or in connection with them (including non-contractual disputes or claims) shall be construed in accordance with English Law