

Mizkan Limited Terms and Conditions of Sale

1. DEFINITIONS

In these terms and conditions:

1.1 The “Company” means Nakano UK Vinegar Limited (No. 08053234), and its successors and assigns.

1.2 The “Customer” means person to whom the Company is to supply Products pursuant to an order.

1.3 “Contract” means these Terms and Conditions of Sale and, in respect of each order placed by the Customer for Products and accepted by the Company, the applicable invoice issued by the Company in respect of the relevant Order.

1.4 “Products” means any products and/or materials supplied by the Company to the Customer under a Contract.

1.5 “Interest” means the Bank of England base rate prevailing during the period plus 8% per annum. [

1.6 “Terms and Conditions” means these terms and conditions of sale-, as amended from time to time in accordance with clause 15.9.

2. APPLICABILITY OF TERMS AND CONDITIONS

Any Products supplied by the Company to the Customer will be supplied on these Terms and Conditions which shall prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by trade, custom or practice or any course of dealing. If the Customer places an order for Products with the Company, the Customer will be deemed to have accepted these Terms and Conditions.

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 before acceptance of the Customer's order.

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 the Contract will not be formed until the Company delivers the Products to the Customer.

3.3 The Customer is responsible for ensuring that the details of any order are complete and accurate.

3.4 The Products are offered to the Customer subject to the availability of stock. Where Products are not available, the Company has no obligation to supply.

3.5 The Company reserves the right to vary or alter the specification of its products without notice, unless otherwise agreed in writing with the Customer. [In respect of any Products the subject of an Order, the Company may amend the specifications of the

Products by notice in writing to the Customer at any time prior to acceptance of such order in accordance with clause 3.2.

3.6 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.

3.7 Any drawings, descriptions, serving suggestions, specifications, samples or other information contained in any materials or information provided by the Company to the Customer are only and such materials shall not form part of the Contract and the Company shall not be liable for any inaccuracy or deviation from them.

3.8 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 the 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 Customer's premises, in accordance with clause 6.4 or deemed delivery in accordance with clause 6.5.

4.2 The Company shall not be responsible for any loss or damage to the Products sustained whilst on Customer's premises, 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 Customer's premises or the act, default or omission of the Customer or its representatives.

4.3 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.

4.4 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; and

(e) notify the Company immediately if it becomes subject to any of the events listed in Condition 9.

4.5 Notwithstanding clause 4.4, 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.

4.6 If before title in the Products passes to the Customer the Customer becomes subject to any of the events list 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 [Unless otherwise agreed by the Company in writing, the price for the Products will be the price contained in the Company's price list current as at the date the applicable order is accepted by the Company in accordance with clause 3.2. The Company may amend the prices of the Products at any time at its absolute discretion, provided that, in respect of any Products the subject of an order, the Company may not amend the price following acceptance of such order in accordance with clause 3.2.] Prices are quoted exclusive of VAT, which will be invoiced to the Customer in addition to the price, if applicable, together with all other applicable taxes and duties asserted or levied in connection with the supply of the Products to the Customer.

5.2 Where credit is granted by the Company, unless otherwise agreed in writing, all sums must be paid by the Customer within 14 days from the end of the calendar month in which the invoice was raised. [Notwithstanding anything in this clause 5 to the contrary, the Company reserves the right to require that Products 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 judgement 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 In the event of standing orders or direct debits due from a Customer to the Company being dishonoured, a charge of £45 (or such other sum as the Company may from time to time advise the Customer) will be made on the Customer's account to cover bank and administrative costs.

5.7 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.

5.8 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.

5.9 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 [Company's delivery schedule, current as at the date the order relevant to such Products is accepted by the Company in accordance with clause 3.2. Unless otherwise agreed by the Company in writing, 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. 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 agreed otherwise by the Company, the Products may be delivered in instalments and each such instalment shall be treated as a separate Contract.

6.4 Delivery of the Products shall be deemed to occur upon completion of unloading of the Products at the Delivery Location.

6.5 [Notwithstanding clause 7.2, 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 pay for the actual quantity delivered.

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 premises of the Customer, 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;

7. ACCEPTANCE AND CLAIMS PROCEDURE

7.1 The Customer must check that the quantity and specifications of Products delivered correspond with the Contract before signature of the delivery note.

7.2 Subject to clauses 6.5 and 11, claims in respect of short deliveries or damage to Products must be made to the Company within 24 hours of the time of the delivery which gives rise to the claim. The Customer must retain damaged 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 7.2 are complied with.

8. CANCELLATION OF CONTRACT

The Customer may not cancel or amend any order without the written consent of the Company. The Company reserves the right upon consent being given to a cancellation to levy a cancellation charge of not less than 20% 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 hereunder 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; or

(e) the Customer is in [material] breach of the terms of the Contract,

then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to cancel the Contract or suspend any further deliveries under the 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 (with the exception of Customer Nominated Products in respect of which the Company's complete responsibility is set out in clause 13) shall comply with the Food Safety Act 1990 (if applicable) and all relevant 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 applicable 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 applicable Product, where applicable; and

(b) in respect of any Product supplied by the Company under a 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 damage or for short delivery unless the provisions of clauses 6.5 and 7 have been complied with;

(c) for any claim arising on an invoice issued more than one month before the date upon which such claim 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 these Terms and Conditions 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, personal injury or fraud caused by the Company's negligence shall not be limited.

12. INTELLECTUAL PROPERTY

12.1 Copyright and all other 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.

12.2 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.

12.3 Where the Company designs the Products pursuant to a commission from the Customer, then any copyright, design right or other intellectual property in them shall vest in the Company and the Customer agrees that it shall do any acts and execute any documentation required by the Company to secure vesting of such rights in the Company. 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 the rights of any third party.

13. 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 the 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, 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.

14. CONFIDENTIALITY

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

14.2 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 advisors 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.

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

15. ADDITIONAL TERMS

15.1 Failure or delay on the part of the Company in enforcing any provision of the 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.

15.2 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.

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

15.4 Any written communication given pursuant to the 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 enquiries@nakano.co.uk and shall be deemed to have been received by the addressee two days after the date of posting.

15.5 Subject to clause [3.8], 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.

15.6 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.

15.7 If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.

15.8 The signature on behalf of a 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.

15.9 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.