

1. INTERPRETATION

- 1.1. The definitions in this condition apply in these terms and conditions:
"Company" means A.G. BARR p.l.c. (Company Number: SC005653) having its registered office at Westfield House, 4 Mollins Road, Cumbernauld G68 9HD;
"Contract" means an Order and the Supplier's acceptance of such Order (in accordance with condition 2.2), to be governed in accordance with these Terms and Conditions;
"Delivery Location" shall have the meaning set out in condition 4.1.1;
"Goods" means the goods (or any part of them) set out in the Order;
"Order" means the Company's written instruction to buy the Goods;
"Price" shall have the meaning set out in condition 7.1;
"Specification" means any specification for the Goods that is either provided to the Supplier by the Company, or produced by the Supplier and agreed in writing by the Company;
"Supplier" means the company who accepts the Company's Order and supplies the Goods to the Company; and
"Terms and Conditions" means these terms and conditions.

- 1.2. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted

- 1.3. Condition headings do not affect the interpretation of these Terms and Conditions.

2. APPLICATION OF TERMS

- 2.1. Subject to any variation made in accordance with condition 2.4, these Terms and Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Furthermore, no terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification, invoice or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

- 2.2. The Supplier represents that the responses it has provided to the Company's supplier approval questionnaire are accurate. The Supplier acknowledges that the Company has relied upon these responses in deciding to enter into the Contract with the Company.

- 2.3. Each Order for Goods by the Company from the Supplier shall be deemed to be an offer by the Company to buy Goods subject to these Terms and Conditions. The Order shall be deemed to be accepted on the earlier of (i) the Supplier issuing a written acceptance of the Order; and (ii) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

- 2.4. Any variation to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by the Company.

3. GOODS

- 3.1. The Supplier undertakes and warrants that the Goods shall, at the time of delivery and for the shelf life of the Goods;

- 3.1.1. conform in all respects with the Order and any applicable Specification;

- 3.1.2. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including all applicable health and safety legislation and/or regulations;

- 3.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication;

- 3.1.4. be free from defects in design, material and workmanship;

- 3.1.5. be capable of being stored and usable safely without causing death, injury, loss or damage; and

- 3.1.6. conform to any sample of the Goods supplied to and approved by the Company.

- 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.

- 3.3. The Supplier shall permit representatives of the Company, during normal working hours and upon reasonable notice, to inspect the premises used by the Supplier for the manufacture and storage of the Goods and to undertake audits, quality control tests, technical checks and examination of plant and equipment used by the Supplier and inspect all necessary records and documentation for the purposes of ascertaining whether the provisions of these Terms and Conditions are being complied with. If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to these Terms and Conditions, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4. DELIVERY

- 4.1. The Supplier shall deliver the Goods:

- 4.1.1. carriage paid, to the Company's premises or such other location as set out in the Order, or as instructed by the Company prior to delivery (the **"Delivery Location"**);

- 4.1.2. on the date specified in the Order or, if no such date is specified, within 28 days of the date of the Order. Time for delivery shall be of the essence;

- 4.1.3. during the Company's normal business hours, or as instructed by the Company.

- 4.2. The Supplier shall ensure that:

- 4.2.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

- 4.2.2. all Goods shall be clearly and accurately marked and labelled so that the Company can correctly identify the Goods;

- 4.2.3. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the 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;

- 4.2.4. on delivery of the Goods to the Company, the Supplier, its employees and subcontractors (if any) shall comply with all local health and safety rules in force at the Company's sites (copies of which are posted at site gatehouses) and high visibility jackets and safety footwear shall be worn by the Supplier's employees and subcontractors (if any) at all times while on the Company's sites;

- 4.2.5. if the Supplier requires the Company to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

- 4.3. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

- 4.4. The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where the Company agrees in writing to accept delivery by instalments, the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

- 4.5. If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

- 4.6. The Company shall not be deemed to have accepted the Goods until it has had 28 days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

5. REMEDIES

- 5.1. If the Goods are not delivered in accordance with condition 4 or do not comply with the undertakings and warranties set out in condition 3 then, without limiting any of its other rights or remedies, the Company shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- 5.1.1. to terminate the Contract;

- 5.1.2. to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

- 5.1.3. to require the Supplier to repair or replace the rejected Goods and/or to provide a full refund of the price of the rejected Goods (if paid);

- 5.1.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 5.1.5. to recover from the Supplier any costs incurred by the Company in obtaining substitute goods from a third party; and

- 5.1.6. to claim damages for any other costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

- 5.2. These Terms and Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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- 5.3. The Supplier shall keep the Company indemnified in full against all liabilities, losses (including without limitation, loss of profit, loss of business, depletion of goodwill and like loss), claims, damages, injuries, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- 5.3.1. any breach of the warranties stipulated in condition 3;

- 5.3.2. any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- 5.3.3. any claim made against the Company by a third party in respect of product liability arising under the Consumer Protection Act 1987;

- 5.3.4. any claim made against the Company by a third party to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

- 5.3.5. any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This condition 5.3 shall survive termination or expiry of the Contract.

- 5.4. The Company's rights and remedies under these Terms and Conditions are in addition to its rights and remedies implied by statute and common law.

6. RISK/PROPERTY

Title and risk in the Goods shall pass to the Company on completion of delivery.

7. PRICE AND PAYMENT

- 7.1. The price of the Goods shall be as agreed between the parties or as stated in the Order and, unless otherwise agreed in writing by the Company, shall be exclusive of value added tax but inclusive of packaging, insurance and carriage of the Goods (the **"Price"**). No variation in the Price or extra charges shall be effective unless agreed in writing and signed by the Company

- 7.1.2 The Supplier may invoice the Company for the Goods at any time after the completion of delivery in accordance with condition 4.

- 7.1.3 The Company shall pay correctly rendered and valid invoices by the end of the month following the month of receipt of the same.

- 7.1.4 The Company may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

8. CONFIDENTIALITY

Each party (**"Receiving Party"**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, recipes, ingredients, processes or initiatives which are disclosed to it by the other party (**"Disclosing Party"**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and/or its pricing which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

9. TERMINATION

- 9.1. The Company may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice (to include email), whereupon the Supplier shall discontinue all work on the Contract.

- 9.2. The Company may terminate the Contract with immediate effect by giving written notice (to include email) to the Supplier if the Supplier becomes subject to any of the following events:

- 9.2.1. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- 9.2.2. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

- 9.2.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or

- 9.2.4. an application is made to court, or an order is made, for the appointment of an administrator or if an administrator, administrative receiver or receiver is appointed over the Supplier; or

- 9.2.5. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this condition 10.2; or

- 9.2.6. the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or

- 9.2.7. the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy

- 9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. INSURANCE

The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance (where relevant), product liability insurance and public liability insurance (minimum cover of £10,000,000) to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Company'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. ASSIGNMENT

The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce).

13. GENERAL

- 13.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be sent by pre-paid first-class post, recorded delivery, commercial courier or e-mail.

- 13.2 A notice or other communication shall be deemed to have been received: if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent or e-mail, 24 hours after transmission.

- 13.3 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.

- 13.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

- 13.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 13.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

- 13.7 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law, and the parties submit to the exclusive jurisdiction of the Scottish courts.

PRIVACY NOTICE

As one of our suppliers, we may collect certain personal data about you. We will only use this information in ways we consider fair. More information about what we do with the information we collect about you can be found in our supplier privacy notice at www.aqbarr.co.uk/termsofbusiness.