



# Terms and Conditions

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1. **This Agreement.** This agreement: (a) sets out the terms and conditions governing the sale and supply of the goods described in the order form (the “**Goods**”) by Kiernan Milling Unlimited (the “**Supplier**”); and the client named in the order form (the “**Client**”) (b) applies to the exclusion of any other terms Client (as defined in the order) seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The order constitutes an offer by the client to purchase Goods in accordance with this agreement.
2. **Duration.** This agreement shall commence on [DATE] and continue, unless terminated earlier in accordance with clause 11, until the 31<sup>st</sup> day of December 2018. The agreement shall automatically renew annually unless mutual agreement to terminate has been reached and said agreement to terminate has been reduced to writing and signed by both parties. The Supplier is entitled to terminate this agreement at any time unilaterally without reason on 14 days’ notice in writing.
3. **Supply of Goods.**
  - 3.1 Supplier shall use reasonable endeavours to manage and deliver the Goods to Client, in accordance with this agreement in all material respects. The Supplier shall use all reasonable endeavours to meet any performance/delivery dates, but any such dates shall be estimates only and time shall not be of the essence for performance/delivery of the Goods. The Supplier reserves the right to amend the specification as necessary to comply with any applicable law or regulatory requirement.
  - 3.2 All orders for the Goods placed from time to time by the Client are subject to acceptance by the Supplier.
  - 3.3 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Client, the Client shall indemnify the Supplier 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 and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Supplier’s use of the specification.
  - 3.4 Order for Goods manufactured, treated or obtained to Client’s special order/specifications cannot be cancelled without the Supplier’s agreement.
  - 3.5 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the order, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
  - 3.6 The Supplier shall deliver the Goods to the location set out in the order.
  - 3.7 Delivery is completed on the completing of unloading of the Goods at the delivery location irrespective of whether the delivery docket has been signed by the Client. A signature of the Supplier’s carrier will be sufficient evidence of delivery.
  - 3.8 No claim for short weight or measures shall be made against the Supplier after the Client takes delivery of the Goods and the weight of the Goods supplied shall be deemed to be not less than the weight recorded in the Supplier’s weighbridge and the measure of Goods shall be or be deemed to be not less than as shown on the Supplier’s delivery docket.
4. **Quality**
  - 4.1 The Supplier warrants that on delivery, and within forty-eight hours of delivery (“**Warranty Period**”), the Goods shall:
    - 4.1.1 conform in all material respects with their description and any applicable specification; and
    - 4.1.2 be of satisfactory quality (within the Sale of Goods Act, 1980 as amended)
  - 4.2 Subject to clause 4.3, if the Client gives notice in writing to the Supplier during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 4.1 the Supplier shall at its option, replace the Goods or refund the price of the Goods.
  - 4.3 The Supplier shall not be liable for the Goods failure to comply with the warranty set out in clause 4.1 in the event that the defect arises because of the Client failed to follow the Supplier’s oral or written instructions as to use and storage; such Goods to be stored in a cool, dry place/appropriate conditions for animal feed or good trade practice regarding the same.
5. **Title and Risk**
  - 5.1 The risk in the Goods shall pass to the Client on completion of delivery.
  - 5.2 Title to the Goods shall not pass to the Client until the earlier of:
    - 5.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Supplier has supplied to the Client in which case title to the Goods shall pass at the time of payment of all such sums; and
    - 5.2.2 the Client resells the Goods, in which case title to the Goods shall pass to the Client in circumstances where the Client sells as principal and not as the Supplier’s agent and title to the Goods shall pass from the Supplier to the Client immediately before the time at which resale by the Client occurs.
    - 5.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 5.3 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in clause 11, then, without limiting any other right or remedy the Supplier may have; the Client’s right to resell the Goods or use them in the ordinary course of its business ceases immediately; and the Supplier may at any time require the Client to deliver up all Goods in its possession that have not been resold or utilised, and if the Client fails to do so promptly, enter any premises of the Client or any third party where the Goods are stored in order to recover them.
6. **Client’s Responsibilities.**
  - 6.1 Client shall co-operate with Supplier in all matters relating to the Goods;
  - 6.2 If Supplier’s performance of its obligations under this agreement is prevented or unreasonably delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Supplier (i) shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client, and/or (ii) may invoice the Client for costs incurred for the Goods provided to date.
  - 6.3 Client shall ensure that the terms of the order are complete and accurate.
7. **Price and Payment**
  - 7.1 The price of the Goods shall be set by our sales team prior to the order, or, if no price is quoted, the price set out in the Supplier’s current price list in force as at the date of acceptance of the order.

- 7.2 All prices are, unless otherwise stated, are set by Kiernan Milling and any increase in costs may be added to the sale price as stated and shall be paid by the Client.
- 7.3 The Client shall pay each invoice submitted by the Supplier within the specific terms agreed by the Supplier, maximum terms are 60 days, in full and cleared funds to a bank account nominated in writing by the Supplier and time shall be of the essence for payment.
- 7.4 Credit terms are at the sole discretion of the Supplier. The Supplier is not under any obligation to furnish the Client with a credit facility. The maximum term of credit is 60 days. The credit terms shall be indicated to the Client at the point of sale on each particular order. In the event that there is any conflict between the terms of this clause 7 and the credit terms set out in the [New] Customer Application Form, the [New] Customer Application Form shall prevail. The Supplier can extend the term of credit at its sole discretion. The Supplier can also unilaterally reduce the term of credit if any one (or more) of the circumstances set out in this clause 7 or clause 11 occur.
- 7.5 All sums payable to the Supplier will be subject to VAT, at the appropriate rate if applicable, which will be payable by the Client unless a valid exemption applies.
- 7.6 If the Client fails to make a payment due to the Supplier under the agreement by the due date then, without limiting the Supplier's remedies under clause 7, the Client 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 clause will accrue each day at 4% per annum above the Bank of Ireland's base rate from time to time, but at 4% per annum for any period when the base rate is below 0%.
- 7.7 The Supplier reserves the right to require immediate payment and stop supplies in the event the Client suspends payment of monies due, commits an act of bankruptcy, or makes any arrangement or composition with creditors or otherwise shows evidence of insolvency.
- 7.8 All amounts due under the agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deductions or withholding of tax as required by law).

**8. Intellectual Property Rights and Acknowledgement.** All intellectual property rights arising out of or in connection with the Goods, and any mobile application, platform or similar system made available by us in connection with the Goods, shall be owned and/or controlled by the Supplier.

#### **9. Data Protection and Data Processing**

- 9.1 Data protection legislation means any and all laws, statutes, regulations, by-laws, orders, ordinances and court decrees that apply to the processing of the Client personal data, including the General Data Protection Regulation EU 2016/679 (the "GDPR"), and any other binding codes of practice or regulations or other legislation made under or separate to the GDPR relating to the processing of personal data.
- 9.2 Both parties will comply with all applicable requirements of the data protection legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 9.3 Without prejudice to the generality of clause 9, the Supplier shall to the extent it acts as a processor of personal data within the meaning of the data protection legislation, in relation to any personal data processed as a result of or in connection with the performance by the Supplier of its obligations under this agreement:
  - 9.3.1 process personal data only on the written instructions of the Client unless the Supplier by the laws of the European Union applicable to the Supplier to process personal data. Where the Supplier is relying on laws of a member of the European Union or European Union laws as the basis for processing personal data, the Supplier shall promptly notify the Client of this before performing required unless prohibited by law;
  - 9.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 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 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);
  - 9.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - 9.3.4 not transfer any personal data outside the European Economic Area unless prior written consent of the Client has been obtained and the following conditions are fulfilled: (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) 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 (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of personal data.
- 9.4 notify the Client without undue delay on becoming aware of a personal data breach.
- 9.5 at the written request of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by law to store the personal data; and
- 9.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 9.
- 9.7 The Client consents to the Supplier appointing [THIRD-PARTY PROCESSOR] as a third-party processor of personal data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement terms which are substantially similar to those set out in this clause 9. The Supplier shall be liable for all acts and omissions such sub-processor as if that of the Supplier for the purposes of this agreement.

#### **10. Limitation of Liability, Warranties and Indemnities**

- 10.1 Supplier shall not be liable to Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of damage to goodwill; loss of use of corruption of software; data or information; or any indirect or consequential loss. Supplier's total liability to Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the total amount of payments paid to the Supplier in

the 12 month period immediately preceding the event that gave rise to the liability. Nothing in this agreement shall limit or exclude Supplier's liability for (a) death or personal injury caused by its negligence (b) fraud or fraudulent misrepresentation or (c) breach of any terms implied by the Sale of Goods and Supply of Services Act, 1980 (as amended) or any other liability which cannot be limited or excluded by applicable law.

10.2 Unless the Client notified the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the date on which the Client became, or ought reasonably to have become aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.3 The Client shall indemnify and keep indemnified the Supplier in respect of those losses, damages, fines, penalties or other liabilities suffered or incurred by, awarded against or agreed to be paid by, the Supplier and any sub-processor arising from or in connection with any non-compliance by the Client with data protection legislation and/or breach by the Client of any of its obligations under this agreement.

## 11. Termination

11.1 Either Party may terminate this agreement at any time for any reason on 30 days' written notice. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the agreement with immediate effect by giving written notice to the Client if: (a) the Client fails to pay any amount due under the agreement on the due date for payment or (b) there is a change of control of the Client.

11.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by written notice to the other party if: (a) the other party commits a material breach of any term of the agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so; (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction] or the supplier is of the belief that the Client is about to take such steps; or (c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the agreement has been placed in jeopardy.

11.4 On termination of the agreement: (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt; and (b) the Client shall return all of the Goods and which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the agreement.

12. **Compliance with Laws.** Each party will perform their obligations under this agreement in accordance with all applicable laws.

13. **Confidentiality.** Each party undertakes that it shall not at any time during the agreement, and for a period of five years after termination of the agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the agreement.

14. **Force Majeure.** Neither party shall be in breach of the agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

15. **Assignment and other dealings.** Neither party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement, without the prior written consent of the other, which consent shall not be unreasonably withheld.

16. **Waiver.** A waiver of any right or remedy under the agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17. **Rights and Remedies.** The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. **Severance.** If any provision or part-provision of the agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

19. **Entire Agreement.** The agreement 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. Each party acknowledges that in entering into the agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the agreement.

20. **No Partnership or Agency.** Supplier and Client are independent contractors and nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21. **Variation.** Except as set out in these agreement, no variation of the agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 22. Notices.** Any notice given to a party under or in connection with the agreement shall be in writing and shall be delivered by hand or by pre-paid ordinary 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); Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and (b) if sent by pre-paid ordinary post, at 9.00 am on the second business day after posting.
- 23. Governing Law.** The agreement, 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 the Republic of Ireland.
- 24. Jurisdiction.** Each party irrevocably agrees that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the agreement or its subject matter or formation.
- 25. Dispute Resolution.** If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute. Unless otherwise agreed between the parties within 14 working days of notice of the dispute, the mediator will be nominated by the Law Society of Ireland. No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.





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