

AFH SALES AND SUPPLY CONDITIONS - DIRECT SUPPLY

1. DEFINITIONS

In these Conditions:

"Contract" means a contract for the supply of Goods arising either from the Customer entering into a Trading Agreement or in the absence of a Trading Agreement, Kraft Foods accepting the Customer's order for Goods.

"Customer" means the person, firm or company whose order is accepted by Kraft Foods.

"Goods" means the goods supplied to the Customer under the Contract.

"Kraft Foods" means Kraft Foods UK Ltd company number 203663.

"Trading Agreement" means an agreement relating, amongst other things, to the supply of Goods to Kraft Foods by the Customer.

2. PURPOSE AND SCOPE OF THESE CONDITIONS

2.1 The purpose of these Conditions is to set out Kraft Foods' conditions of supplying Goods to a Customer. Where these Conditions form part of a Trading Agreement, in the event of any conflict between these Conditions and such Trading Agreement, the latter shall apply.

2.2 These Conditions cover financial, physical and administrative processes, and are applicable across all the Goods distributed via a Kraft Foods controlled distribution network.

3. EFFICIENCY BRACKET PRICING GUIDELINE

Kraft Foods' price lists are constructed with consideration of the following efficiency practices in addition to achievement of the minimum order volume criteria detailed in these Conditions. Opportunities to improve efficiencies as detailed below may result in further discounts based on individual customer circumstances:

- Efficient replenishment measured by Order Size
- Efficient replenishment measured by Order Structure
- Administration rebate determined by a list of criteria:
 - Volume through central warehouse
 - Pallet format
 - Multi-category warehouse
 - Ratio delivery points/customer warehouse
 - Central Ordering
 - Central Invoicing
 - EDI Orders
 - Promotional forecasting
- Stock visibility.

4. ORDERS TO CASH PROCESS

4.1 Orders: No order will be binding on Kraft Foods until the order is accepted by Kraft Foods supplying the Goods.

4.1.2 No order which has been accepted by Kraft Foods may be cancelled by the Customer except with the written agreement of Kraft Foods and on terms that the Customer shall indemnify Kraft Foods in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), charges and expenses incurred by Kraft Foods as a result of cancellation.

4.1.3 Kraft Foods aims to optimize the efficiency of the supply process, in partnership with its customers. In line with this objective, Kraft Foods prefers to receive orders using EDI process and prices support this efficiency.

4.1.4 Kraft Foods reserves the right to limit order quantities where Kraft Foods believes the ordered quantities exceed the Customer's normal order pattern and/or the Customer's agreed credit limit or payment terms have been exceeded.

4.1.5 **Order times (Note – all references to hours and dates exclude weekends and public holidays):**

4.2.1 All ordered Goods are must be submitted to Kraft Foods not less than 72 hours prior to the Customer's requested delivery date. The 72-hour cut-off time is 12:30 p.m.

4.2.2 Equipment: delivery dates will be agreed with the Customer taking into account e.g. the type of equipment being supplied and final delivery point.

4.2.3 All other Goods:

Orders between 0-300 cases, orders must be submitted to Kraft Foods not less than 120 hours prior to the Customer's requested delivery date. The 120-hour cut-off time is 12:30 p.m. Orders over 300 cases, orders must be submitted to Kraft Foods not less than 72 hours prior to the Customer's requested delivery date. The 72-hour cut-off time is 12:30 p.m.

4.3 Ordering unit: The ordering unit is the SKU (stock keeping unit), which is a single case of Goods. This means the smallest delivery unit is a single case of Goods. Each ordered line quantity must be expressed as a whole number of cases.

4.4 The minimum order quantity for any type of Goods (i.e. Coffee, Chilled, Grocery and Confectionery) is 20 cases. However, this cannot be mixed between Ambient & Chilled.

4.4.2 Any order not meeting the above minimum requirements will be subject to a surcharge of £37.52 (plus VAT), or such other amount as notified by Kraft Foods from time to time.

4.5 Product availability:

4.5.1 All supplies of Goods are subject to availability. Kraft Foods reserves the right to deliver orders at a future date or cancel orders at any time without incurring any liability to the Customer. If an order is cancelled, the Customer may reorder when the Goods are available. If Kraft Foods and the Customer agree in advance, Kraft Foods can substitute one SKU for another SKU with similar characteristics.

4.5.2 Backorders: Kraft Foods does not operate backorder mechanics; accordingly, the Customer is expected to reflect any shortages in future orders. Only where Kraft Foods and the Customer have an agreed joint volume forecast for a specific event/activity is the Customer entitled to reorder any short delivered Goods at the original price and allowances.

4.6 Information on the purchase order:

The Customer's order must contain as a minimum the following information:

- Order by party
- Ship to party (i.e. delivery address)
- Invoice to party
- Paid by party
- Customer purchase order number
- Requested delivery date
- Product case code and case quantity, or product consumer unit code and consumer unit quantity expressed as a whole number of cases.

4.7 Information on the EDI process:

4.7.1 Orders must be received using EDI process, supported by the EANCOM or the EAN.UCC XML standards. Each of the following criteria must be fulfilled in the EDI Order process:

- The product master data files must be aligned between the core systems of both parties (in relation to coding, palletizing, pricing) before start up of EDI Order process.
- The EDI Orders language and norm must be agreed between the 2 parties.
- The order must contain all the relevant information detailed in Condition 4.6.

4.7.2 Kraft Foods does not pay any costs incurred by the Customer placing orders via EDI. All Customer data must be transmitted to Kraft Foods in an accurate and timely manner to ensure that orders are not delayed.

4.8 Pricing:

4.8.1 Unless a quotation or tender has been submitted the price of the Goods shall be the price ruling at the date of delivery notwithstanding any price specified in any order or order acceptance.

4.8.2 Where a quotation or tender has been submitted, unless otherwise stated in writing by a duly authorized representative of Kraft Foods, the specified price shall only remain open

for acceptance by the Customer within 28 days from the date of such quotation or tender. 4.8.3 The price of the Goods shall be subject to the addition of Value Added Tax and other taxes (if any) and the cost of any special packaging required by the Customer.

4.8.4 Any increase in costs or expenses arising from any act or omission or any special requirement of the Customer or any modifications made at the Customer's request may, at Kraft Foods' option, be charged to the Customer.

4.8.5 Prices quoted are subject to revision for errors and omissions at any time without any liability on the part of Kraft Foods.

4.8.6 Kraft Foods may modify its prices and pricing conditions unilaterally at any time. Kraft Foods generally provides a week's notification to its Customers of price changes on all Goods, although due to the commodity nature of some Goods e.g. coffee, this notification period may be less.

4.8.7 Any price variation announcement will contain two dates; the "announcement date" is the date when Kraft Foods declares the price variation and the "effective date" – the date when the price variation becomes operative for invoicing.

4.8.8 All specific off-invoice rebates are handled via a separate process.

4.8.9 If Products are supplied in PMPs (price marked packs) these are recommended prices only and the Customer is free to meet them at different prices.

4.9 Invoicing: The invoicing date is determined by Kraft Foods. The Kraft Foods invoicing date principle is that the sale is recognized on delivery.

4.10 Payment terms:

4.10.1 The payment terms are defined by Kraft Foods and are applicable to all the orders sent by the Customer. The payment date is defined with reference to the invoice date.

4.10.2 Payments for Goods supplied must be made in full without set-off as follows:

- Payment to invoice: Payment must be received by Kraft Foods within 28 days from date of invoice.
- Payment against monthly statement: Payment must be received by Kraft Foods no later than the 14th of the month following delivery.

4.10.3 Unless the Customer specifies in writing, at the time a payment is made to Kraft Foods, to which account and/or invoice such payment is to be allocated, Kraft Foods may at its discretion allocate any such payment to any account or invoice relating to the Customer.

4.10.4 If Kraft Foods does not receive payment from the Customer by the due date Kraft Foods shall be entitled (without prejudice to any other right or remedy it may have) to:

- Suspend all further deliveries of Goods until payment is received; and/or
- Repudiate the Contract in which case Kraft Foods shall be entitled to sell any Goods comprised in the Contract still in its possession and the Customer shall indemnify Kraft Foods for any loss of profit occasioned thereby; and/or

• Kraft Foods shall be entitled to charge interest on the monies owing by the Customer to Kraft Foods at the statutory rate of interest payable on late payments from time to time under the Late Payment of Commercial Debts (Interest) Act 1988 calculated on a daily basis from the date of default until the date of payment of all overdue monies.

4.10.5 Notwithstanding Condition 4.10.2 Kraft Foods shall without prejudice to its other rights have the right by notice in writing to the Customer to vary any credit terms offered to the Customer and/or demand immediate payment of all monies due from the Customer to Kraft Foods for any Goods delivered at any time PROVIDED that if the Customer ceases to purchase any Goods from Kraft Foods for any reason or Kraft Foods ceases to supply any Goods to the Customer for any reason the whole amount of any outstanding monies shall fall due for immediate payment.

4.10.6 The Customer shall indemnify and hold Kraft Foods harmless against all costs (including legal costs on a full indemnity basis) however incurred by Kraft Foods in the course of recovering any monies not paid by the Customer for any reason on the due date.

4.10.7 Kraft Foods may monitor and record information relating to the Customer's trade credit performance, and such records may be made available to other organizations to assess applications for credit.

5. DELIVERY

5.1 Cost insurance freight, free warehouse:

5.1.1 Two different modes of supply can be used: shipment directly from a Kraft Foods plant, or shipment from a Kraft Foods warehouse.

5.1.2 Kraft Foods and the Customer will agree in advance the agreed time schedule, standard delivery date and delivery time window.

5.1.3 Any time or date for the delivery of Goods given by Kraft Foods shall be taken as an estimate made in good faith but shall not be binding upon Kraft Foods as a term of the Contract or otherwise. Time for dispatch or delivery shall not be of the essence unless previously agreed in writing by a duly authorized representative of Kraft Foods. In no circumstances shall Kraft Foods be liable for any loss or damage sustained by the Customer in consequence of failure to dispatch or deliver within such time or by such date or in consequence of any other delay in dispatch or delivery, whatever the cause.

5.1.4 The Customer must observe agreed delivery slots and ensure each delivery is completed within 30 minutes of the delivery vehicle arriving at the delivery premises. If delivery is not completed within 30 minutes Kraft Foods may stop the delivery and charge the Customer a delivery fee (set by Kraft Foods) for completing the delivery at a later time or date.

5.1.5 Any specific conditions on delivery must be notified to Kraft Foods reasonably in advance of delivery. Kraft Foods will meet such conditions where reasonably possible.

5.1.6 The Customer must check all delivered Goods and sign and return all delivery notes to the delivery driver confirming the total number of cases delivered. Any damage, shortages, over-deliveries, mis-deliveries or other non-conformance with the Customer's order must be notified to Kraft Foods (and wherever possible to the delivery driver) without delay and in any event within 24 hours of delivery. Such notification must be written on or attached to a copy of the delivery note and handed to the delivery driver or sent to the Kraft Foods Customer Care team by fax (0870 2384391) or by email. Accordingly signing a delivery note e.g. "unchecked" or "unexamined" is of no effect.

5.1.7 Each delivery will be accompanied by a standard delivery note containing the following information:

- Order by party
- Ship to party
- Purchase Order Number
- Product Case Code and Case Quantity
- Actual Ship Date or Planned Delivery Date.

5.1.8 In the event of short delivery or over delivery the Customer shall not be entitled to reject the Goods or to treat the Contract as repudiated and provide Kraft Foods reasonable access to the Goods to correct any mistake in delivery.

5.1.9 The Customer must check and sign all delivery notes at the time of delivery. The signing of the delivery notes will constitute acceptance of the Goods delivered within the meaning of Section 35 of the Sale of Goods Act 1979.

5.1.10 The Customer waives its right to reject part only of a consignment of the Goods under Section 35A of the Sale of Goods Act 1979.

5.1.11 Without prejudice to Conditions 5.1.6, 5.1.8, 5.1.9 and 5.1.10 the Customer shall be deemed to have accepted the Goods if the Customer has not notified Kraft Foods that it has rejected the Goods within 24 hours of delivery.

5.1.12 Subject to Condition 5.1.6 Kraft Foods will not accept any Customer complaints post delivery, and shall not in any event be liable for any loss or damage to the Goods occurring after delivery to the Customer.

5.1.13 Kraft Foods reserves the right to put the Goods, or any portion thereof, into storage at the Customer's risk and expense in the following cases, or in any other comparable circumstances:

- where the Goods are about to be dispatched and the Customer notifies Kraft Foods that the Customer is or will be unable to accept delivery of the Goods when tendered; or
- where the Customer refuses without good cause to take delivery of the Goods or provide Kraft Foods with the information or instructions Kraft Foods requires in order to deliver the Goods.

6. CODING

6.1 Product coding:

6.1.1 Kraft Foods considers material master data alignment to be the primary enabler to successful supply processes. Specific programs should be initiated to improve accuracy of data in the core systems of both parties (coding, palletizing, weight, size, naming, ...) in common with national or international standards

6.1.2 Kraft Foods follows national or international standards for the coding of its products, in line with the following:

- the GTIN (Global Trading Identification Number) will be based on the EAN.UCC product numbering system and allow for the unique global identification of a product
- each consumer unit will be identified by a unique EAN-13 code, or for some situations, i.e. small packs, by a unique EAN-8 code
- each Stock Keeping Unit (SKU) will be identified by a unique EAN-14 code
- each Shipping Unit (full pallet) will be identified by a unique, serialized number, the SSCC-18 code. This code is exclusively numerical. It does not identify a certain product but a logistical unit.

6.1.3 Kraft Foods does not use or record Customer product codes.

6.2 Kraft Foods locations coding: Kraft Foods follows national or international standards for the coding of its locations, in particular:

- GLN (Global Location Number)

The Global Location Number (GLN) is based on the EAN.UCC location numbering system and allows for the unique global identification of any location in the supply chain.

6.3 Customer locations coding: Kraft Foods follows national or international standards for the coding of different Customer locations, in particular GLN, across:

- Sold-to-party: the legal entity which places the order
- Ship-to-party: the physical entity Kraft Foods delivers ordered Goods to
- Bill-to-party; the functional entity Kraft Foods invoices Goods to
- Payer: the functional entity which pays the invoice.

7. TRANSFER OF RISK AND TITLE

7.1 Transfer of risk: It is expressly agreed that risk in the Goods shall be transferred to the Customer either:

- when the Goods arrive at the Customer's premises or at one of the warehouses designated by the Customer, where the Goods are unloaded by the Customer or its agents; or
- when the Goods are unloaded, where Kraft Foods or Kraft Foods' contractors unload the Goods.

7.2 Transfer of title:

7.2.1 It is expressly agreed that the title to Goods supplied shall remain with Kraft Foods until full payment is received for those Goods together with all other amounts owed by the Customer.

7.2.2 If the Customer fails to pay any amount owed to Kraft Foods when due, Kraft Foods shall have the right (without prejudice to any other rights it may have) to repossess and resell any Goods to which it has retained title and the Customer hereby grants an irrevocable right and licence to Kraft Foods to enter upon the Customer's premises during normal business hours for the purpose of repossessing Goods to which Kraft Foods has retained title. This right and licence is without prejudice to any accrued rights of Kraft Foods under the Contract with the Customer or otherwise.

7.2.3 Notwithstanding this Condition 7.2, Kraft Foods shall be entitled to bring an action against the Customer for the price of the Goods or for any other remedy available to it in the event of non-payment by the Customer by the due date.

7.2.4 Until title to the Goods has passed to the Customer pursuant to this Condition 7.2, the Customer shall:

- hold all Goods in its possession on a fiduciary basis as Kraft Foods' bailee;
- store the Goods (at no cost to Kraft Foods) separately from all other goods of the Customer or any third party in such a way that the Goods remain readily identifiable as Kraft Foods' property;
- not destroy, deface or obscure any identifying mark or packing on or relating to the Goods; and
- maintain the Goods in satisfactory condition and keep them insured on Kraft Foods' behalf for their full price against all risks to Kraft Foods' reasonable satisfaction. On request the Customer shall produce the insurance policy to Kraft Foods.

8. PRODUCT QUALITY

8.1 Compliance:

8.1.1 All Goods are warranted to comply with the Food Safety Act 1990 and current legislation relating to the manufacture and supply of food. Catering packs not intended for sale by retail are excluded from warranties applicable only to retail products. The Goods are packed and labeled for the UK Market. Packaging labeling and ingredient laws and regulations may vary for other countries and accordingly Kraft Foods cannot accept any liability whatsoever arising from the Goods being sold in any other country.

8.1.2 By establishing a strict distribution control process across all the supply chain, especially in relation to Temperature and Hygienic standards, Kraft Foods is committed to maintaining high product quality standards. In tracking customer complaints on a brand and on a Customer axis, Kraft Foods aims to identify ad-hoc action plans with the Customer to decrease complaint trends. Kraft Foods' objective is to avoid heat damage to the Goods during transportation and consequently to minimize substandard quality Goods being delivered to the Customer.

8.1.3 Kraft Foods endeavours to maintain the correct 1st and hygienic control of Goods from its production units until delivery to the Customer. The Customer should agree with Kraft Foods the best procedures in relation to 1st and hygienic control across the total supply chain.

8.2 Storage conditions:

8.2.1 The Customer will comply at all times with the appropriate storage conditions for the different product categories contained in the packaging or labels of the Goods and as detailed below:

- Ambient Storage:
 - Prevailing conditions with no control over temperature applied.
 - Typical temperature range: + 5°C to + 35°C.

8.2.2 Chilled/Refrigerated Storage:

- Temperature controlled within a defined range of + 1°C to + 8°C.
- Humidity range not defined.

8.2.3 Controlling of temperature carried out using calibrated recording equipment.

• Procedures in place to assure that products are pre-chilled to required temperature prior to loading, and vehicles are pre-chilled prior to loading for distribution.

• Temperature Controlled/Conditioned Storage:

- Temperature controlled within a defined range of + 14°C to + 18°C.
- Humidity ideally between 50-65%.

• Monitoring of temperature and humidity carried out using calibrated recording equipment.

8.2.2 The Customer shall at all times comply with any instructions as to storage contained in Kraft Foods' specifications relating to the Goods or contained on the packaging or labels of the Goods and comply with all legislation relating to the Goods (including without limitation the storage, packaging, labeling and supply of the Goods in its own customers) and shall not use, re-sell or otherwise supply or offer to supply to third parties any of the Goods after their "Best Before" dates have expired.

8.2.3 The Customer undertakes to indemnify and keep Kraft Foods indemnified against any liability, claim, damage, loss, cost or expense that Kraft Foods may incur arising out of the Customer's breach of this Condition 8.2.

8.3 Best before dates: In accordance with food labelling regulations, consumers are required to carry 'Open Date Marking' on certain food and drink products. On all relevant Goods the 'Best Before' date is printed on the pack & the outer cases display the 'Best Before' date on the side of the case. Upon request Kraft Foods can supply the Customer with the general rules of remaining shelf life by product category.

8.4 Claims:

8.4.1 Except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), Kraft Foods' liability, in respect of Goods supplied to the Customer, is limited as provided in these Conditions, and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4.2 Where the Goods are sold to a consumer (as defined in the Unfair Contract Terms Act 1977) their statutory rights are not affected by anything in these Conditions.

8.4.3 Subject to Condition 5.1.6 any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to Kraft Foods within 7 days after discovery of the defect or failure, and in any event within 6 months of delivery of Goods which are equipment, and in respect of all other types of Goods before the expiration of any "Best Before" dates applicable to such Goods.

8.4.4 If delivery of any Goods is not released at the time of delivery, and the Customer does not notify Kraft Foods that it rejects the Goods in accordance with Condition 5, the Customer shall not be entitled to reject the Goods and (subject to Condition 8.4.3) Kraft Foods shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.4.5 In the case of a claim that the Goods (other than the equipment) are defective or otherwise, the Customer shall be deemed to have accepted the Goods if the Customer, or its agent, as Kraft Foods may reasonably specify forward to Kraft Foods a sample of the Goods in question together with details of the consignment in which the Goods were contained. In all such cases the Customer shall immediately cease to use all similar Goods received under the same consignment and the Customer shall immediately give to Kraft Foods all facilities which it reasonably requires to check (where appropriate) that the Goods have been stored by the Customer under the correct conditions and to check any tests or assessments of the Goods made or to be made by the Customer.

8.4.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Kraft Foods in accordance with these Conditions, Kraft Foods shall be entitled to repair or replace such Goods free of charge or, at Kraft Foods' sole discretion, credit the Customer with the price of such Goods, but Kraft Foods shall have no further liability to the Customer.

8.4.7 Any claim by the Customer that there has been no delivery or a shortfall in the quantity of the Goods delivered must be notified to Kraft Foods in accordance with Condition 5. If Kraft Foods has failed to deliver all or part of the Customer's order for the Goods for any reason other than a cause beyond Kraft Foods' reasonable control or the Customer's fault, Kraft Foods shall be entitled at its sole discretion either to supply additional Goods, to the Customer to make up such shortfall, or credit the Customer with the price of such Goods, but Kraft Foods shall have no further liability to the Customer.

8.4.8 In default of compliance with the provisions of this Condition 8.4 claims by the Customer (other than claims arising from negligence and resulting in personal injury or death) are hereby expressly agreed to be barred and any damage suffered by any Goods shall be deemed to have occurred following delivery unless the contrary is proved by the Customer to the reasonable satisfaction of Kraft Foods.

8.4.9 Except in respect of death or personal injury caused by Kraft Foods' negligence, or 8.4.10 In respect of products under the Consumer Protection Act 1987, Kraft Foods shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition, or other term, or any duty at common-law, or under the express terms of the Contract, for any loss or damage (whether for loss of profit, loss of business, loss of contracts, loss of goodwill or otherwise), or for any indirect, special or consequential loss or damages, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Kraft Foods, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delivery in supplying or failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer.

8.4.10 Except as expressly provided in these Conditions, the entire liability of Kraft Foods whether under the Contract or in tort or otherwise shall not exceed the price of the Goods.

8.4.11 If a Court finds that it would not be reasonable for Kraft Foods to rely upon the exclusions or limitations contained in these Conditions it is expressly agreed that Kraft Foods' liability in respect of any claim in any event shall be limited to such sum as Kraft Foods may, in reasonable steps be able to obtain under any insurance it may have which covers the Customer's claim.

9. PRODUCT SPECIFICATIONS

9.1 Description

9.1.1 Kraft Foods' specifications, brochures, catalogues, price lists and all descriptions of the Goods contained therein are merely indications of the kind of goods supplied by Kraft Foods and no particulars contained in any of them shall bind Kraft Foods unless otherwise expressly agreed in writing by a duly authorized representative of Kraft Foods.

9.1.2 Kraft Foods reserves the right to make alterations to the design, appearance and specification/recipe and/or the packaging of the Goods and its advertised information concerning such Goods from time to time. Where such alterations are, in the reasonable opinion of Kraft Foods, likely to be material, Kraft Foods shall give the Customer prior notice of such alterations.

9.2 Pallets: The standard pallet used by Kraft Foods. All such pallets are the type of GUN-Check ("Chep") and are delivered ex Kraft Foods to the Customer on a one way trip basis (not one for one exchange). Chep are responsible for collection of empty pallets from the Customer's site(s). The Customer is therefore required to register its site(s) with Chep and make empty pallets available for collection without delay when Chep attends such site(s).

9.3 Traceability: Kraft Foods is developing a traceability process based on EAN128 pallet labelling till delivery to the Customer. To further develop and guarantee end-to-end traceability, Kraft Foods needs to work in collaboration with the Customer to enable the Customer to trace the Goods in its responsibility area.

10. KEY PERFORMANCE INDICATORS

10.1 To assist Kraft Foods in developing its Continuous Improvement process, Kraft Foods will establish and measure together with the Customer the following KPI:

• Case Fill Rate (service rate in cases): Measured as a % of the number of compliant cases received by the Customer's warehouses out of the total number of cases initially ordered by the Customer.

10.2 Kraft Foods does not accept and will not pay any penalties linked with the above KPI (or with any other logistic indicators), but will use such KPI as part of its Continuous Improvement process to achieve the following:

- Optimal on shelf availability
- Alignment with the Customer's KPIs
- Agreed objectives
- Identified derelictives
- Agreed action plan.

10.3 To enable Kraft Foods to achieve the above it would like the Customer to share the following: Case Fill Rate (service rate in cases): Measured as a % of the number of compliant cases received by the Customer's stores out of the total number of cases initially ordered by the Customer from its warehouses.

• On Shelf Availability (service rate to the shopper in consumer units): definition and measure to be agreed with the Customer.

11. PROMOTIONAL/EVENT MANAGEMENT

11.1 The Customer will agree and commit to a process with Kraft Foods on promotional/event management, to cover:

- Agreed product codification for the specific promotional SKU
- Agreed timetable and lead-time of the event
- Collaborative forecasting to include anticipated order patterns for duration of promotion
- Respect of a due date and pacing for final quality ordering and delivering.
- 11.2 Exchange of event EPOS data (Electronic Point of Sale data) between the Customer and Kraft Foods improves the overall supply chain process; it may be mandatory for some promotions/events (e.g. buy one, get one free)

12. FORCE MAJEURE

If the performance of the Contract by Kraft Foods shall be delayed or prevented by any circumstances or conditions beyond the reasonable control of Kraft Foods including (but not limited to) the generosity of the foregoing war, industrial dispute, strike, lock-out, riot, fire, storm, Act of God, accident, non-availability or shortage of materials or labour, any statute, rule, by-law, order or requisition made or issued by any legislature, Government or Government Department, local or other duly constituted authority, then Kraft Foods shall without liability to the Customer have the right of its sole discretion either to suspend further performance of the Contract until such time as the cause of the delay or prevention shall no longer be present or to be discharged from further performance under the Contract. If Kraft Foods decides to discharge itself from further performance under the Contract the Customer shall thereupon pay the Contract price less a reasonable allowance for what has not been performed by Kraft Foods.

12.1 **GENERAL**

12.1.1 **Anti-money laundering:** It is contrary to the operating policy of Kraft Foods to receive payment of monies which do not have a legitimate and lawful origin or have arisen from illegal or immoral activities. Accordingly, the Customer hereby warrants that all payments made to Kraft Foods are from monies derived from legal trade activities and that it will indemnify and keep Kraft Foods indemnified against any liability, claim, damage, loss, cost or expense that Kraft Foods may incur in respect of any breach of such warranty.

12.2 **Trademarks:** Kraft Foods products and related materials feature trademarks and service marks that are the property of, or are licensed to Kraft Foods and its various affiliates. They may also feature trademarks or service marks of third parties. All these trademarks are the property of their respective owners, and the Customer agrees not to use or display them in any manner without the prior written permission of the trademark owner.

12.3 **Set off:** Kraft Foods may (but is not obliged) at any time (without notice to the Customer) set off any liability of Kraft Foods to the Customer against any liability of the Customer to Kraft with in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency or its denomination) and may in such purpose convert or exchange any currency. Any exercise by Kraft Foods of its rights under this Condition shall be without prejudice to any other rights or remedies available to Kraft Foods under the Contract or otherwise.

12.3.4 **Proper law and jurisdiction:** The Contract (including these Conditions) shall be construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

12.3.5 **Interpretation:**

12.3.5.1 All prices quoted by Kraft Foods are based upon these Conditions and reflect the limitations on Kraft Foods' liability which they contain.

12.3.5.2 All offers are accepted and all Goods are sold subject to and upon these Conditions. The Customer shall be deemed to have agreed to these Conditions in relation to all present and future dealings between the parties.

12.3.5.3 All conditions, whether proposed or stipulated by the Customer and no other terms, conditions, warranties, particulars, standards, criteria, specifications and other matters whether written or oral, express or implied shall form part of or be deemed to be incorporated into these Conditions and/or the Contract unless agreed in writing by a duly authorised representative of Kraft Foods.