

Terms & Conditions of Purchase

These are the Terms and Conditions on which Brakes may purchase Goods from its suppliers. All suppliers are requested to read these Terms and Conditions carefully and, by accepting an Order from Brakes, the Supplier shall be deemed to agree to supply the Goods in accordance with these Terms and Conditions. These Terms and Conditions are divided into two parts: Part 1 sets out general terms that will apply to all suppliers, irrespective of the type of Goods being supplied; and Part 2 sets out supplemental terms that will apply if the Order is for the supply of Goods, whether food products, beverages or otherwise, intended for resale by Brakes to its own customers.

PART 1 – GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

In these Terms and Conditions the following definitions apply:

“Affiliate” means, in relation to any party, any subsidiary undertaking or parent undertaking of that party and any subsidiary undertaking of that parent undertaking for the time being;

“Brakes” means Brake Bros Limited and/or its Affiliates (as appropriate);

“Goods” means the materials, products or services or any of them (including Nominated Products) which are described in Brakes’ Order;

“GTIN” means the Global Trade Item Number which is a product code (barcode) approved and issued by a recognised datapool being globally recognised as the identifying code of a given product;

“Order” means an order for Goods placed by Brakes;

“Supplier” means the person, firm or company to whom an Order is addressed;

“Terms and Conditions” means these terms and conditions.

2 GENERAL

(1) These Terms and Conditions shall be incorporated into an Order (but in the case of an Order for the provision of services only so far as they are relevant). The Supplier’s acknowledgement of the Order, commencement of work on the Goods, shipment or supply of the Goods, whichever occurs first, shall be deemed to be the Supplier’s acceptance of the Order. THE SUPPLIER’S ACCEPTANCE OF THE ORDER IS LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS AND BRAKES SHALL NOT BE BOUND BY ANY OTHER TERMS OR CONDITIONS PROPOSED BY THE SUPPLIER OR PRINTED IN ANY DOCUMENTATION PROVIDED BY THE SUPPLIER IN CONNECTION WITH THE ORDER.

3 VARIATION

Brakes reserves the right to amend these Terms and Conditions from time to time on giving 4 weeks prior notice to the Supplier.

4 SPECIFICATION

(1) The Supplier warrants that the Goods shall conform with the specification requirements as agreed between Brakes and Supplier, together with any other, drawings, samples or other descriptions agreed between the Supplier and Brakes. Conformity with the foregoing shall not absolve the Supplier of any other legal or moral responsibility relating to the supply of the Goods or any other aspect of its activities.

(2) Brakes reserves the right for its employees or representatives to visit the Supplier's premises to verify at source that the Goods conform to specification. The Supplier shall provide Brakes with all facilities reasonably required for inspection and testing. Such inspection and testing shall not absolve the Supplier from liability or responsibility under these Terms and Conditions nor imply acceptance of any of the Goods.

(3) Unless otherwise agreed in writing between the parties, should the Supplier wish to cease supply, for whatever reason, of an existing product to Brakes, it is the Supplier's responsibility to ensure a minimum of 12 weeks' written notice is provided to Brakes.

5 LEGISLATIVE REQUIREMENTS

The Supplier warrants that the Goods including their packaging and labelling shall comply with all applicable laws, regulations, British standard specifications and codes of practice (including general trade or other recognised regulations or specifications) relating to the supply and sale of the Goods. Without prejudice to the generality of the foregoing the Supplier warrants that:

(1) all Goods supplied to Brakes shall not have been rendered injurious to health and shall be of the nature, substance and quality described in the specification agreed by Brakes;

(2) it has carried out such checks as a leading, prudent supplier could reasonably be expected to carry out to comply with all the aforementioned legislation and regulations and that it is in all the circumstances reasonable for Brakes to rely on those checks;

(3) all its premises, equipment, machinery and other apparatus used in connection with the manufacture, storage and supply of goods comply with the appropriate standards of cleanliness and hygiene.

6 PRODUCT QUALITY, FITNESS FOR PURPOSE AND SUPPLIER'S CARE AND SKILL

(1) The Supplier warrants that the Goods shall be of the agreed quality, free from defects in material or workmanship and wrapped, packaged and labelled appropriately so as to prevent damage or deterioration in delivery or storage.

(2) The Supplier warrants that the Goods shall be fit for the particular purpose for which Goods of this type are normally used.

(3) Where the Order is for the provision of services the Supplier warrants that it will provide the services in a good and workmanlike manner using all reasonable care and skill and in accordance with any service level agreement agreed between Brakes and the Supplier.

7 NO THIRD PARTY RIGHTS

The Supplier warrants that the Goods shall be free from any third party lien, claim, title or interest.

8 INTELLECTUAL PROPERTY RIGHTS

(1) The Supplier shall indemnify Brakes from and against any and all liability, actions, proceedings, claims, costs, expenses, losses or damage incurred by Brakes in relation to any actual or alleged infringement of any patent, registered design, trade mark, copyright or other registered or unregistered intellectual property right arising out of the sale or use of the Goods provided always that the Supplier shall not be required to indemnify Brakes against such infringements where the Goods are supplied to the particular design or specification of Brakes.

(2) The use by the Supplier of any material in which the copyright, patent, trade mark, trade name, registered design, or other intellectual property rights are vested in Brakes shall be limited solely to performance of the Order.

(3) Labels, packaging and any other materials bearing or subject to Brakes' name, trade mark or other intellectual property shall, upon termination or cancellation of an Order, be at Brakes' option either delivered up to Brakes carriage paid or destroyed.

(4) All data, specifications, recipes or other materials supplied by or paid for by Brakes in connection with the supply of the Goods shall be and remain the property of Brakes. The Supplier hereby waives any lien or other rights that it might otherwise have on or in respect of any of Brakes' property.

(5) Where Brakes commissions the Supplier under or in connection with the Order to create any work, design, concept, data, invention, recipe, new product or improvement, ownership of such works, designs, concepts, data, inventions, recipes, new products and improvements including all intellectual property rights therein shall vest in Brakes upon their creation and any right, title or interest which may be vested in the Supplier is hereby assigned to Brakes with full title guarantee, with the intent that all such intellectual property rights shall be the sole and absolute property of Brakes.

(6) Without limitation to Clause 8(5) above, the Supplier hereby assigns to Brakes all works, designs, concepts, data, inventions, recipes, improvements and discoveries (whether such is patentable or not or capable of any kind of registration) created or conceived after Brakes commissioning the Supplier to create or conceive the same made by any person employed by or working under the direction of the Supplier including all intellectual property rights therein.

(7) The Supplier shall on request give to Brakes the originals and copies of all documents,

designs, drawings, data and information of whatsoever nature in its possession or under its control belonging to Brakes pursuant to Clauses 8(5) and 8(6).

9 CONFIDENTIALITY

The Supplier may as a result of an Order or otherwise in the course of its discussions with Brakes receive confidential or market sensitive information concerning Brakes. The Supplier may also be in possession of property belonging to Brakes pursuant to Clause 8. The Supplier shall not announce or disclose the existence of any contractual arrangements between the Supplier and Brakes, and the Supplier agrees that it will treat all such information (including, but not limited to, details regarding the Goods, specifications, pricing, the content of any correspondence between the parties and any other information that is marked as confidential or is reasonable to consider is of a confidential nature) as confidential and will not directly or indirectly disclose it or use it for any purpose other than to fulfil its obligations to Brakes under the Order. The Supplier shall immediately return to Brakes any such property or confidential information on the request of Brakes.

10 PRICE

(1) The prices agreed between the Supplier and Brakes shall not be subject to any increase or additional levy, save for the application of VAT (subject to Clause 10(2)) or any increase in the rate thereof, unless agreed by Brakes 3 months in advance of the application of such increases and where the Supplier provides all relevant justification documents in support of such increases. Where applicable, any increases sought should be timed to coincide with the issue by Brakes of its own customer price lists.

(2) It is the responsibility of the Supplier to notify Brakes of the VAT status of each product and any subsequent changes to that status. The Supplier shall be liable for all costs incurred by Brakes for failure to notify such status or changes thereof.

(3) Brakes shall be entitled to any discount for prompt payment, bulk or volume purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

(4) For the avoidance of doubt, the price agreed between Brakes and the Supplier shall include all associated costs, including the cost of packaging, insurance, carriage of the Goods, import taxes and any other trade duties or tariffs, unless otherwise agreed in writing between Brakes and the Seller. Notwithstanding any pricing agreed with the Supplier, if any new import duties or tariffs (or similar taxes) become payable by Brakes, the parties shall promptly meet (at the request of Brakes) and the parties shall renegotiate in good faith the price of the Goods.

11 PAYMENT

(1) All invoices must be validated against delivery notes. Invoices may not be issued prior to the date of delivery of the Goods. All invoices must quote Brakes' official Order number and the relevant Brakes product code(s) and be sent to Brakes at an address specified by Brakes. A signed delivery note will be made available on request.

(2) In the event that the Supplier's invoice is for an amount greater than the price of the Goods to which the invoice relates as recorded in Brakes' ledger, Brakes may withhold payment of the full amount of the invoice pending agreement of the amount outstanding. Alternatively, Brakes may raise and forward to the Supplier a detailed debit note for the difference and deduct such amount from the invoice. Brakes may, at its discretion, charge an additional £20 administration fee.

(3) Save for Goods delivered in accordance with Clause 32(1) below, if a signed delivery note does not accompany the Supplier's invoice and the quantity of Goods to which the invoice relates is greater than the quantity of Goods recorded in Brakes' copy of the delivery note, Brakes will raise and forward to the Supplier a detailed debit note for the value of the undelivered quantity of Goods and deduct such amount from the invoice. Brakes may, at its discretion, charge an additional £20 administration fee.

(4) Unless otherwise previously agreed in writing, and subject always to Clause 32(1) below, payment will be made by BACS. Brakes shall pay for the Goods weekly, no earlier than 60 days after date of delivery. Whenever any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any amount then due, or which may at any time thereafter become due, to the Supplier from Brakes.

(7) Where an overrider or other financial agreement requires additional information to be submitted by the Supplier to Brakes, the Supplier shall submit the relevant information in the required format by the agreed date. Late submission of information shall result in an administration charge of £500 per occasion.

(8) If the Supplier does not supply an invoice for Goods delivered within 6 months of the date of delivery Brakes shall not be obliged to make payment for the Goods (save for Goods delivered in accordance with Clause 32(1)).

(9) Any queries relating to invoices or self billing payments, part paid or not paid, or deductions made by Brakes from a payment to the Supplier, must be made within 12 months of the date of delivery of the Goods or services or the deduction being made or Brakes shall not be obliged to make any payment to the Supplier in relation to those items.

12 DELIVERY

(1) Unless otherwise agreed the Supplier shall deliver the Goods to such destination as Brakes may direct. Each delivery shall be accompanied by a delivery note clearly marked with Brakes' Order number, the consignee, the relevant GTIN(s) (where appropriate), the description and number of units of the Goods, the unit size and, if appropriate, the best before date of all Goods,

as well as such other relevant information or paperwork as requested by Brakes or as otherwise required by any applicable legislation or regulations.

(2) The Supplier shall further ensure that Brakes' Order number the GTIN (where appropriate) for all Goods are clearly shown on all invoices, credit notes and other correspondence relating to the Order. All invoices and credit notes must be valid for VAT purposes.

13 RISK

The Goods will be delivered to the destination directed by Brakes at the risk of the Supplier who will maintain adequate insurance. Risk shall not pass from the Supplier to Brakes until the Goods have been unloaded, checked and accepted on Brakes' behalf at the designated delivery point.

14 PROPERTY

Property in the Goods shall pass to Brakes when the Goods have been delivered to Brakes (or Brakes' appointed recipient), unloaded, checked and accepted on Brakes' behalf.

15 FORCE MAJEURE

Neither party shall be responsible for failure to perform any obligation under these Terms and Conditions to the extent it is caused by circumstances beyond the party's reasonable control ("Force Majeure Event") provided that Brakes or the Supplier (as appropriate):

- (1) has taken all reasonable steps to prevent and avoid the Force Majeure Event;
- (2) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as is reasonably practicable; and
- (3) on becoming aware of the Force Majeure Event, promptly informs the unaffected party by telephone and in writing of the Force Majeure Event, the known or anticipated impact of the Force Majeure Event and (where reasonably practicable) with a reasonable estimate of the period during which the Force Majeure Event will continue and the mitigating action proposed to be taken during such period; and
- (4) notifies the unaffected Party when the Force Majeure Event has concluded.
- (5) If the Force Majeure Event resulting in Brakes not receiving the Goods continues for more than 14 calendar days Brakes may terminate the Order(s) by providing the Supplier with written notice.

16 REJECTION

(1) Without prejudice to any other rights it may have, if any of the Goods or the packages containing the same shall be found within a reasonable time of delivery to be defective or, in Brakes' reasonable judgment, to not comply with the Order or with any of these Terms and Conditions or any term implied by law including quantity, quality, specification, or description,

Brakes shall be entitled to reject those Goods or any part of them irrespective of whether Brakes had initially accepted them. The whole of any consignment may be rejected if a reasonable sample of the Goods taken indiscriminately from that consignment is found in Brakes' reasonable judgment not to conform in every material respect with the aforementioned requirements.

(2) Brakes will be entitled to return rejected Goods to the Supplier (and the Supplier shall bear all risks and expenses related to the return of rejected Goods including without limitation freight, duties and insurance) or Brakes may elect to store such Goods at the Supplier's risk subject to a storage charge payable by the Supplier for the period until collection by the Supplier or destruction by Brakes (and the costs of such destruction by Brakes shall be borne by the Supplier). In any event, Brakes shall be entitled to charge the Supplier for any costs incurred by Brakes as a result of rejections of Goods in accordance with Brakes' 'Working with Us' guide for suppliers or these Terms and Conditions.

(3) In the event that rejected Goods are returned to the Supplier, the Supplier shall ensure that any Brakes' labelling and any other reference to Brakes, its products or services is removed from such Goods prior to their subsequent disposal to any third party.

(4) Any acceptance by Brakes of Goods which are in any way defective or which do not otherwise conform with these Terms and Conditions or any term implied by law shall be without prejudice to any rights or remedies which Brakes may have against the Supplier.

17 TERMINATION FOR CAUSE

Without prejudice to any of its other rights or remedies and without incurring any liability, Brakes may terminate an Order or any part thereof in the event that the Supplier commits a material breach of its obligations contained in the Order or any form of insolvency proceedings are commenced in respect of the Supplier. Upon receipt of a notice of termination from Brakes, the Supplier shall immediately stop and cause all of its suppliers and sub-contractors to stop all work under the Order or the part which has been terminated.

18 NON-DELIVERY

Time is of the essence for an Order. If the Goods are not delivered on the date(s) specified in the Order, Brakes may, without liability and without prejudice to any other rights or remedies it may have: (a) terminate the Order by notice to the Supplier effective upon receipt in respect of Goods not yet shipped or services not yet rendered; and (b) buy substitute Goods elsewhere and recover from the Supplier any additional expenditure reasonably incurred.

19 ASSIGNMENT AND SUB-CONTRACTING

The Supplier shall not assign, transfer, or sub-contract the production or supply of any Goods without the prior written consent of Brakes.

20 BRAKES' STAFF

The Supplier agrees that, in order to protect the confidential information of Brakes, it will not without Brakes' prior written consent, employ any senior member of Brakes' personnel for six months from the date on which they leave Brakes' employment.

21 INDEMNITY

(1) In addition to the Supplier's other obligations hereunder, the Supplier shall defend, indemnify and hold Brakes harmless against any and all demands, damages, claims, liabilities, losses, costs and expenses (including legal expenses) arising out of or resulting from any known or unknown defect in the Goods or the negligence of, default of or breach of these Terms and Conditions (including breach of any warranty) by the Supplier, its agents, employees or sub-contractors.

(2) Notwithstanding the above, the Supplier agrees to comply with Brakes' Hold Harmless Agreement, a copy of which is available on request.

22 INSURANCE

The Supplier shall insure with an insurance company of good repute against its liability under Clause 21 (Indemnity), in the minimum sum of £10 million pounds, or such other sum as may be agreed, in respect of any one incident and in the event that the Supplier fails to do so Brakes may effect such insurance and charge the cost of the same together with an administrative charge of 5% to the Supplier.

23 WAIVER AND REMEDIES

(1) Neither Brakes' failure to insist on the performance of any of these Terms and Conditions, nor its failure to exercise any right or privilege, nor its waiver of any breach hereunder, shall be deemed to be a waiver of any of these Terms or Conditions or breaches by the Supplier of an Order whether of the same or a similar type.

(2) Brakes' signature of receipt, inspection, testing, payment for or use of the Goods furnished under an Order shall not affect the Supplier's obligations under the warranties contained in these Terms and Conditions which shall survive Brakes' inspection, testing, acceptance and/or use.

(3) The rights and remedies provided by these Terms and Conditions are cumulative and are not exclusive of any rights or remedies provided by law.

24 THIRD PARTY RIGHTS

The parties do not intend that any term of an Order will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

26 GOVERNING LAW AND JURISDICTION

An Order shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with an Order and the legal relationships established by the Order.

27 SUPPLIER'S LABELLING AND PACKAGING

The Supplier shall be responsible for ensuring that all of its labelling and packaging complies with all prevailing and future legislation likely to come into force during the shelf life of the Goods. Brakes reserves the right to reject any Goods that in its discretion do not comply with such legislation.

28 COMPLIANCE WITH RELEVANT LAWS AND POLICIES

(1) In performing its obligations under these Terms and Conditions, the Supplier shall ensure that it (including its subcontractors and its supply chain): (i) comply with all applicable laws, statutes, regulations and industry codes from time to time in force (including, but not limited to, the Modern Slavery Act 2015, the Data Protection Act 1998, and the Bribery Act 2010; and (ii) comply with Brakes' business policies and codes, including Brakes' Ethical Trading Code of Conduct and Anti-Corruption and Bribery Policy (available on request) as may be amended from time to time.

(2) Without limiting the Supplier's obligations under this Clause 28, the Supplier shall: (i) not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of human rights or in any use of child labour. Furthermore, the Supplier will take responsibility for the health and safety of its employees, and the Supplier will act in accordance with all applicable health and safety and environmental laws.

29 ENTIRE AGREEMENT

(1) These Terms and Conditions (and any documents referred to in these Terms and Conditions) constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter.

(2) Each party agree that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions.

PART 2 – SUPPLEMENTAL TERMS FOR GOODS INTENDED FOR RESALE

The following definitions shall also apply in Part 2 of these Terms and Conditions:

“Group” means in relation to any party, that party and its Affiliates;

“Nominated Products” means products that are not sourced by Brakes, but, which at the request of a customer, Brakes has agreed to purchase from the Supplier and supply to Brakes’ customer;

“Out of Pocket Costs” means ad hoc expenses including but not limited to reimbursements or compensation to claimants;

“Technical Guidance” means the product quality specification set out in the technical guidance document issued by Brakes from time to time to the Supplier.

29 GOODS FOR RESALE

Any Order shall also incorporate the provisions of the current edition of the document entitled “Working with Us”, (Brakes’ guide for suppliers) which Brakes has provided to the Supplier and a further copy of which is available on demand from Brakes. In the event of any conflict between these Terms and Conditions and the “Working with Us” document, these Terms and Conditions will prevail. Both documents are reproduced on the website at brake.co.uk.

30 SPECIFICATION

(1) The Supplier warrants that the Goods shall conform with the specification requirements set out in the Technical Guidance, together with any other specifications, drawings, samples or other descriptions agreed between the Supplier and Brakes. Conformity with the foregoing shall not absolve the Supplier of any other legal or moral responsibility relating to the supply of the Goods or any other aspect of its activities.

(2) The Supplier shall provide relevant product information to enable formulation of a comprehensive product specification for the Goods or otherwise to satisfy Brakes that appropriate legislative or regulatory requirements are complied with, such information to be provided as reasonably required by Brakes from time to time. No changes shall be made to the agreed specification without the prior agreement of Brakes’ Technical Department and Commercial Manager.

(3) Where new ambient branded product lines are introduced to Brakes’ core listing, sales of these product lines shall be reviewed at the regular review meetings. In relation to the first three months of orders placed by Brakes, where stock is either returned to the Supplier or destroyed because it subsequently passes its best before date (whether this occurs before or after the three month period), the Supplier shall underwrite the cost to Brakes of all such stock and charges.

31 LEGISLATIVE REQUIREMENTS GOOD FOR RESALE

The Supplier warrants that:

(1) all foodstuffs and beverages supplied to Brakes (whether as ingredients or finished products) which will be sold by Brakes under a trademark or name belonging to or associated

with Brakes, are free from any genetically modified material (or material derived from crops that have been genetically modified, including additives and flavourings);

(2) all foodstuffs and beverages supplied to Brakes which will be sold by Brakes under a trademark or name belonging to the Supplier (or any third party) will be free from any genetically modified material (or material derived from crops that have been genetically modified, including additives and flavourings) unless otherwise agreed in writing between Brakes and the Supplier;

(3) all foodstuffs and beverages (and any ingredients/raw materials used therein) supplied to Brakes shall not have been subjected to any irradiation treatment; and

(4) all manufacturing premises of the Supplier supplying Brakes with foodstuffs have attained: (i) 'B' or higher grade certification against the BRC Global Standard for food; and (ii) catering supplies and equipment, certification against the BRC Global Standard for consumer products unless otherwise agreed in writing between Brakes and Supplier.

32 PAYMENT – SELF BILLING

(1) Brakes may require the Supplier to deliver via Brakes' Depot Consignment operation. Where this is the case, Brakes will make payment through Brakes' "Self Billing" function, in accordance with delivery notes and the Supplier shall not submit invoices for such Goods, as otherwise required by this Clause.

(2) In the event that Brakes' "Self Billing" payment is for an amount less than the agreed price of the Goods to which it relates, the Supplier shall notify Brakes and, where such additional payment is validated by Brakes, it shall raise a supplementary billing document for the difference.

(3) Supplier must return a signed copy of these Terms and Conditions, and Brakes' Pro-Forma Self Billing Agreement (available on request), where required, before payment will be made.

33 E-COMMERCE

(1) All communications between the Supplier and Brakes, and/or any nominated service providers, will require the use of GTINs. The Supplier acknowledges that the Supplier's internal product codes will not be recognised by Brakes.

(2) It is Brakes' intention to continue to develop its e-commerce systems and programmes and the Supplier shall ensure that its systems are fully compatible with Brakes' systems from time to time.

(3) The Supplier shall be a member of a recognised Datapool system, and any and all data interchange between the Supplier and Brakes (including, without limitation, in relation to any new listing or amendments to existing Goods) will be transmitted by such datapool, unless agreed otherwise in writing by Brakes.

(4) The Supplier is required to subscribe to Brakes' isupply! web portal to enable it to receive purchase orders, sales history, delivered service performance information, inventory visibility

and any self billing documents relating to consolidation and/or consignments and agrees to execute any further terms and conditions relating to such web portal required by Brakes.

(5) The Supplier shall be fully liable for any and all subscription monies (and associated charges) payable in connection with the requirements of this Clause (including, without limitation, any isupply!, Assure or datapool subscription charges).

34 DISPOSAL OF GOODS TO THIRD PARTIES

In the event that in anticipation of Orders the Supplier has produced Goods or packaging which bear Brakes' labelling or any other reference to Brakes, its products or services which Brakes notifies the Supplier in writing are in excess of its requirements, the Supplier may dispose of such Goods or packaging to third parties but only after it has removed Brakes' labelling and any other reference to Brakes, its products or services from such Goods or packaging.

35 BRAKES' LABELLING AND PACKAGING

The labelling and packaging of Goods shall comply with the requirements laid down by Brakes' Technical Department and must be approved by them prior to first delivery. The Supplier shall pay the artwork charges detailed in the "Working with Us" document unless otherwise agreed by Brakes in writing. Any artwork charges may be amended by Brakes upon reasonable notice to the Supplier.

36 COMPLAINTS

Without prejudice to Clause 21 (Indemnity), costs associated with complaints from customers relating to the Goods which are dealt with by Brakes will be reimbursed by the Supplier in addition to such standard handling charge as Brakes may impose from time to time and all Out of Pocket Costs incurred by Brakes. In the case of injury to customers or a serious complaint, the Supplier shall promptly provide Brakes with all assistance reasonably required by Brakes until the matter is resolved.

37 RECALLS/CLAIMS

The Supplier shall immediately inform Brakes of any adverse analytical, microbiological or other quality defect which may affect the Goods and which is discovered before or after delivery. Without prejudice to Clause 21 (Indemnity) in the event of a withdrawal of any of the Goods due to any manufacturing or other defect, the Supplier shall be responsible to Brakes for all costs, losses and expenses incurred by Brakes including without limitation loss of profit on sales, administration, recall and disposal/return expenses and any other consequential costs which may be incurred.

38 SERVICE LEVELS

(1) The Supplier shall achieve, as a minimum, the following targets for deliveries:

Quantity delivered: 99.8 percent of Order quantity; and

Delivery time: 99 percent of Orders within 30 minutes of delivery time

(2) Without prejudice to Clause 21 (Indemnity) if an out of stock situation is created for Brakes due to the Supplier's failure to deliver at the agreed time Brakes may seek appropriate recompense from the Supplier which may be based on the value of each lost sale to Brakes at Brakes' current list selling price.

(3) Without prejudice to Clause 21 (Indemnity) if the Supplier fails to deliver at the agreed time to any of Brakes' manufacturing sites and this results in lost production and/or wastage of other raw materials Brakes may seek appropriate recompense from the Supplier.

39 DELIVERIES TO BRAKES

Deliveries of Nominated Products will be made by the Supplier into Brakes' specified depot(s) and will be in quantities relating to weekly purchases thereof by Brakes' customer, by distribution area, or as otherwise determined by Brakes.

40 PRICES AND PRICE ALTERATIONS

Where the Supplier makes a special pricing arrangement for a Nominated Product with a customer of Brakes, the Supplier shall ensure that such special price (including the date from which it shall take effect and the period for which it shall apply) is recorded in a written agreement signed by authorised representatives of the Supplier and Brakes' customer. The Supplier shall provide Brakes with a copy of such agreement following which Brakes shall assign such special price to its customer. In the event that Brakes is required to participate in any rebate process in connection with such special pricing arrangement it may charge the Supplier an appropriate administration fee to cover its costs of doing so.

Any variation to the cost price of Nominated Products will only be accepted and actioned by Brakes on written instruction from Brakes' customer, and subject to a minimum 14 days' written notice.

41 PAYMENT FOR NOMINATED PRODUCTS

Brakes will pay the Supplier for Nominated Products on a weekly basis only after it has received full payment in cleared funds for the Nominated Products from its customer provided that payment will be made no sooner than 60 days after the date of delivery.

Brake Bros Ltd. Registered office: Enterprise House, Eureka Business Park, Ashford,
Kent, TN25 4AG. Registered in England No. 02035315