



## INDIA NON JUDICIAL

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Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
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### MANUFACTURING AGREEMENT



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THIS AGREEMENT is made at New Delhi on this 2<sup>nd</sup> day of November, 2018 by and between:

**NESTLÉ INDIA LIMITED**, a company incorporated under the Companies Act, 1956 and having its registered office at 100 / 101, World Trade Centre, Barakhamba Lane, New Delhi 110 001 and head office at Nestlé House, Jacaranda Marg, 'M' Block, DLF City, Phase-II, Gurugram - 122 002, Haryana (hereinafter referred to as the "Company" which expression shall unless repugnant to the context or contrary to the meaning thereof, be deemed to mean and include its successors, authorized signatories and administrators) of the One Part;

And

Symega Food Ingredients Limited, a company incorporated under the Companies Act, 1956, having its registered Office at No.XI/312 G, Synthite Taste Park, Pancode, Near Kolenchery, Kerala - 682310 and factory situated at No.XI/312 G, Synthite Taste Park, Pancode, Near Kolenchery, Kerala - 682310 through its authorized signatory Mr. Santhosh Stephen authorized vide board resolution/ dated 07<sup>th</sup> June, 2018 (hereinafter referred to as "Manufacturer" which expression shall, unless repugnant to the context or contrary to the meaning thereof, be deemed to mean and include its successors, authorized signatories, permitted assigns and administrators) of the Other Part.

**WHEREAS:**

1. The Company and the Manufacturer had entered into a memorandum of understanding dated 12<sup>th</sup> June, 2018 for the purpose of manufacturing, packing and supplying certain quantities of Products (as defined below)(MOU);
2. Now upon successful completion of the conditions precedent as set out in Clause 3 of the MOU, the Parties propose to enter into this agreement for the purpose of manufacturing, packing and supplying certain quantities of Products (as defined below), for sale under its well-known trademarks;
3. The Manufacturer has represented that it has built the requisite capabilities and capacities to manufacture, pack and supply various products including the Products to be manufactured under the present Agreement at its Premises (as defined below) in process of obtaining ISO 22000 (including PAS 220), Sedex, FSSC 22000, ISO 9001, ISO 14001, OHSAS 18001 certifications;
4. The Manufacturer hereby acknowledges that on being engaged by the Company for the purpose of manufacturing, packing and supplying of the Products, it shall become privy to Company confidential and proprietary information including Company Intellectual Property that the Manufacturer undertakes to keep confidential;
5. The Company has basis the above representation made by the Manufacturer, agreed to engage the Manufacturer to manufacture, pack and supply various Products subject to the terms of this Agreement.



**NOW THEREFORE THIS AGREEMENT WITNESSTH AS UNDER:**

**1. Definitions & Interpretations**

**1.1 Definitions**

For the purposes of this Agreement, the following words shall have the following meanings.

- 1.1.1 **"Company Intellectual Property"** Any Intellectual Property Rights that the Company, its associated and subsidiary companies and partnerships, parent company and/or an agent of the foregoing owns and/or contributes to the performance of this Agreement which either existed at the date of this Agreement or that did not exist at such time but has arisen outside of and completely separate to the performance of this Agreement and the New Intellectual Property.
- 1.1.2 **"Effective Date"** shall mean the date of 1<sup>st</sup> (first) commercial production not later than 31<sup>st</sup> December, 2018.
- 1.1.3 **"Intellectual Property Rights"** All intellectual property rights including, without limitation, patents, Know-How (as defined below), registered and unregistered trademarks/designs, utility models, applications for and rights to apply for any of the foregoing, rights to prevent passing off and/or unfair competition, rights in respect of confidential information, copyright, database rights, topography rights, any other rights in any invention, discovery or process, trade secrets and any other intellectual property or industrial property right of any nature whatsoever worldwide together with all renewals and extensions.
- 1.1.4 **"Know-How"** All knowledge, experience, data, technical or commercial information which relate to creation, design, development, manufacture and supply of the Products, including without limitation, descriptions of manufacturing processes, tooling, designs of tooling, recipes, formulae or drawings each relation to the design, development and/or manufacture of the Products.
- 1.1.4 A **"Landed Price"** shall mean cost of goods plus incidental expenses including transportation costs, quality testing costs, non-recoverable duties and taxes.
- 1.1.5 **"New Intellectual Property"** Any Intellectual Property Rights created, produced and/or arising in connection with the performance of this Agreement whether created by or on behalf of either party, excluding always any development, adaptation, modification and/or improvement of or to the Company Intellectual Property and/or the Manufacturer's intellectual property;
- 1.1.6 **"Party" or "Parties"** The Company and the Manufacturer are individually referred to as the "Party" and jointly as the "Parties";
- 1.1.7 **"Premises"** means the Manufacturer's factory premises at No.XI/312 G, Synthite Taste Park, Pancode, Near Kolenchery, Kerala - 682310 or such other premises as may be agreed in advance in writing between the parties.

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- 1.1.8 "Products" means any product or products as mentioned in Annexure -1 and as may be amended in writing between the Company and the Manufacturer, from time to time.
- 1.1.9 "Product Supplies" means any and all the raw materials, ingredients and/or packaging materials, necessary to produce and package the Products for the Company under this Agreement.
- 1.1.10 "Quality Standards" means such standards of quality in relation to the Products specified by the Company hereafter or as otherwise agreed between the parties in writing.
- 1.1.11 "Specifications" means the manufacturing and packing specifications for the Products including the recipe & ingredients and wrapping & packaging (labels & designs) respectively, as set out in Annexure2 as may be specified by the Company in writing, from time to time.
- 1.1.12 "Specified Packaging" The wrapping and packaging (for individual Products and outers) for the Products including the relevant labels and designs specified by the Company, from time to time.
- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.3 Unless the context otherwise requires, references to the singular shall include the plural and vice versa, references to any gender shall include all others and references to persons shall include all bodies corporate, unincorporated associations and partnerships.

## 2. Appointment

The Company hereby appoints the Manufacturer on a non-exclusive basis and the Manufacturer undertakes to manufacture, pack and supply the Products to the Company with effect from the Effective Date.

- 2.1 only on the Premises;
- 2.2 in accordance with the Quality Standards and the Specifications;
- 2.3 in accordance with the other terms and conditions of this Agreement.

## 3. Quantities

During the term of this Agreement, the Manufacturer agrees to manufacture, pack and supply the Products (as mentioned in Annexure-1) to the Company in such quantities and pack sizes as per orders placed by the Company on the Manufacturer from time to time and in accordance with the such delivery schedules as the Company shall intimate the Manufacturer from time to time and in accordance with the provisions of this Agreement.

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Save and except in case of force majeure event and in event of case of default by the Manufacturer, in timely supplying the quantities as per the orders placed meeting the specifications as set out herein, the Company commits to purchase minimum quantities of the Product during the initial period of 3 (years) as set out in Annexure-3.

#### 4. Orders

The Company will place tentative rolling orders for the next 3 (three) months. The Company shall place orders not later than 20<sup>th</sup> day in each month in respect of its approximate requirements for the following 3 (three) months. PROVIDED THAT, that part of each order as relates to the immediately following months shall be firm. By way of illustration, an order placed on 20<sup>th</sup> March shall be firm for the following April and tentative for the following May and June.

#### 5. Specifications

The Manufacturer shall manufacture, pack and supply the Products and use the raw and packaging material strictly in accordance with the Specifications and Quality Standards as set out in Annexure-2 and as may be revised by or on behalf of the Company, from time to time. The Manufacturer will follow the general quality/processing guidelines laid down by the Company as mentioned in Annexure-2.

#### 6. Plant & Equipment

The Manufacturer will use in the manufacture of each of the Products only such plant and other equipment as has been previously approved by the Company in writing. Any such approval by the Company shall not absolve the Manufacturer from its responsibility for ensuring the appropriateness, adequacy and performance of the Equipment. The Manufacturer shall be solely responsible for ensuring the appropriateness, adequacy and performance of the Equipment required for meeting the Product Specifications and Quality Standards for manufacture of the Product.

#### 7. Ingredients used to make the Products

7.1 Except where raw materials (including ingredients and packaging material) are to be supplied by the Company, the Manufacturer will order and purchase directly from suppliers approved by the Company such supplies of the relevant raw material for the Products as are required to enable the Manufacturer to fulfill the Company's forecasted demand for the Products in accordance with Clause 4. In this sub-clause "approved" only denotes acceptance by the Company of the Raw Materials supplier's general capability to supply the relevant raw material and general acceptance of the specification of the raw material. By granting such approval the Company is not commenting on the raw material supplier's compliance with statutory food safety requirements or the Specifications, or on the quality of the raw materials actually supplied. It is the Manufacturer's responsibility to satisfy itself of such compliance.

*[Signature]*



- 7.2 All raw materials must be purchased by the Manufacturer in compliance with the Specifications, the Quality Standards and an appropriate supplier quality assurance programme. The Manufacturer shall be responsible for ensuring that its raw material suppliers and their raw materials comply with all relevant statutory food safety requirements and that the ingredients comply with the Specifications and the Quality Standards.
- 7.3 The Company shall be entitled to make representations to the Manufacturer regarding all aspects of the purchase of raw materials to be used in the manufacture of the Products (including sourcing arrangements, pricing and timing of order placement) and the Manufacturer shall comply with any representation(s) so made. Where in respect of any particular raw materials the Company so instructs, the Manufacturer shall purchase such raw material from the Company.
- 7.4 Without limiting the generality of Clause 7.1, the Manufacturer will not hold in store or order more raw materials than are required to meet such part of any production plan as may be agreed with the Company in writing.
- 7.5 The Manufacturer will not dispose of any of the Products/raw materials except to the Company or as the Company may otherwise agree in writing.
8. **Packaging Materials**
- 8.1 The Manufacturer will order and purchase such supplies of packaging materials as are required to enable the Manufacturer to fulfill the Company's requirements for the Products.
- 8.2 All packaging materials must be purchased by the Manufacturer in compliance with or so as to meet the requirements of the Specified Packaging.
- 8.3 The Company shall be entitled to make recommendations to the Manufacturer regarding all aspects of the purchase of packaging to be used for the Products (including sourcing arrangements, pricing and timing of order placement) and the Manufacturer shall comply with any recommendation(s) so made.
- 8.4 Without limiting the generality of Clause 8.1, the Manufacturer will not hold in store or order more packaging materials than are required to meet such part of any production plan as may be agreed with the Company in writing.
- 8.5 The Company will provide the Manufacturer with the artwork necessary for the manufacture of the Specified Packaging for the Products and the Manufacturer will be responsible for ensuring that the Specified Packaging is produced in accordance with the artwork provided, subject to any colour tolerances which may be agreed by the Company.
- 8.6 Prior to using, releasing, publishing, mass-producing or distributing (as may be applicable) any Product, the Manufacturer shall submit to the Company for prior approval samples of the Specified Packaging and include such amendments as requested by the Company. The Manufacturer will not make any use of the Company Intellectual Property and/or the Specified Packaging, unless and until express written approval of the Company has been

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granted and shall ensure the Company Intellectual Property and/or the Specified Packaging is always reproduced in the form previously approved in writing by the Company and shall not amend, adapt, modify or otherwise change it without the Company's prior written consent.

- 8.7 The Manufacturer will not dispose of or use any of the Specified Packaging except to package the Products to which such Specified Packaging relates unless specifically requested by the Company.
- 8.8 All rights in any of the Specified Packaging developed or designed by the Manufacturer (or by a third party on behalf of the Manufacturer) shall belong to the Company and the Manufacturer shall, if requested, by the Company and at the Company's cost execute or arrange for the execution of a formal assignment of such rights to the Company.

#### 9. Storage and Waste

- 9.1 The Manufacturer will store all stocks of the Products, packaging materials and the Specified Packaging and all ingredients for the Products in conditions which meet any requirements set out in the Quality Standards or Specification for the Products (or as otherwise notified to the Manufacturer by the Company in writing) and in any event in suitable conditions so as to avoid any undue deterioration either in quality or freshness. The Manufacturer shall ensure that there is proper rotation of stock of the Products, ingredients and packaging materials. The Manufacturer will indemnify the Company against damage to and loss of stocks of any ingredients or packaging supplied by the Company under this Agreement whilst they are in the possession or control of the Manufacturer.
- 9.2 The Manufacturer will maintain its plant and all facilities and equipment used by it in connection with the manufacture, storage and packing of the Products in perfect hygiene condition and in accordance with all applicable laws and regulations and in accordance with the standards and specifications of the Company notified in writing to the Manufacturer from time to time. Further the Manufacturer shall use only original spare parts for maintenance of its plant and all facilities and equipment.

- 9.3 Edible and inedible waste arising in relation to the operations of the Manufacturer pursuant to this Agreement shall be disposed of only as agreed by the Company and the Manufacturer, from time to time and subject to any requirements the Company may have in relation to the witnessing or other evidence of such disposal and in accordance with the applicable laws.

#### 10. Prices and Payment Terms

- 10.1 The prices to be paid by the Company for the Products supplied by the Manufacturer shall be as per formula specified in Annexure – 3, which may be modified in writing by the Parties from time to time.
- 10.2 The Manufacturer will submit the FG invoices on daily basis to the Company at such place(s) as may be mutually agreed upon.



A handwritten signature in black ink over a blue ink signature.



- 10.3 The Company will make payment by Cheque/Wire transfer in settlement of each invoice within a period of 15 (fifteen) days from the date of receipt of invoice
- 10.4 The Payment in settlement of each invoice by the Company shall be made to the address of the Manufacturer specified at the head of this Agreement or such other address as shall be specified by the Manufacturer to the Company in writing.
- 10.5 The Company may set off against the prices for the Product stated in the invoices amounts due from the Manufacturer whether under this Agreement or otherwise.
- 10.6 The Company shall solely determine the price of the Product to the consumers and all aspects relating to the marketing and sale of the Products to its customers.

11. **Production Failures**

- 11.1 In the event that the Manufacturer becomes aware of the existence of any quality or technical problem relating to any Products which have left the control of the Manufacturer and the Manufacturer reasonably believes that the problem in question either creates or is likely to give rise to a risk to health or safety of consumers, the possibility of action by enforcement authorities, or a risk of adverse publicity or public dispute for the Company, the following provisions will apply:
- (a) the Manufacturer will immediately, upon becoming aware of the problem, notify the Company by facsimile or telephone. Any such notification shall include, as a minimum:
- (i) the identity and quantity of the Products involved;
  - (ii) any relevant coding information; and
  - (iii) any other relevant information which may be of assistance in tracing the Products;
- (b) representatives of the Manufacturer and the Company shall meet as soon as is practicable for the purpose of agreeing the measures to be taken by the Manufacturer in order to remedy the failure;
- (c) in the event that the Manufacturer shall fail to take such measures as are agreed, the Company shall be entitled to demand the cessation of the production of the Products forthwith and to require the withdrawal from the Company's customers of the Products;
- (d) the cost of implementing any measures agreed pursuant to this sub-clause, or of any further measures which are reasonably necessary in order to reduce or eliminate any of the risks stated above, including but not limited to any product recall, will be borne in full by the party responsible for the quality or technical problem in question.

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- 11.2 In the event that the Manufacturer becomes aware of the existence of any quality or technical problem relating to any Products within the control of the Manufacturer, the following provisions will apply:
- (a) the Manufacturer shall ensure that the Products affected or believed to be affected by the problem are kept separate from all other Products, and are not allowed to leave the Manufacturer's premises without the prior written consent of the Company;
  - (b) the Manufacturer will establish with the Company local reporting procedures with a view to identifying the nature and extent of, and resolving the problem in question, and keeping the appropriate Company representatives informed of all progress being made in these areas.

12. **Labeling**

The Products shall at all times be labeled by the Manufacturer strictly in accordance with the instructions or specifications given by the Company and in compliance with the applicable laws.

13. **Confidentiality**

- 13.1 The Manufacturer specifically acknowledges that all data made available or which will be made available in future to the Manufacturer, whether orally or in writing, for or in connection with the manufacture and/or packing of the "Products" hereunder (including, but not by way of limitation, all information, specifications, standards, drawings, designs, recipes, processes, proprietary ingredients details of ingredients, etc.) are the confidential and the exclusive proprietary knowledge of the owner of the relevant trademarks used for "Products" appearing in Annexure-1, (hereinafter called as the "Confidential Data") and that such data have been made available to, and are held by the Company on trust and as a licensee for the aforesaid trademark owner strictly for the purposes hereof.

The Manufacturer accordingly undertakes to hold and to cause all Confidential Data made available by the Company to be held as absolutely confidential, and not at any time to disclose or suffer any part or parts of same to be disclosed to any person, firm, company or otherwise (including Central or State regulatory authorities) without the specific prior consent in writing of the Company. Without limiting the generality of the foregoing, Manufacturer further undertakes:

- a) To use Confidential Data exclusively for the manufacture and/or packing of the Products for the Company;
- b) To ensure that only such of its staff as need to be directly concerned in the manufacture and/or packing of "the Products" have access to Confidential Data, and then only on the clear understanding with such staff that they are individually bound by the provisions of this Clause;



- c) upon termination of this Agreement howsoever occurring, to immediately desist from using or suffering the use of any Confidential Data and to ensure that all Confidential Data shall be returned to Company without making or retaining any copies or other forms of retrieval thereof.
- d) That the obligations to maintain secrecy shall include not to use this Agreement for making any representation to general investing public, financial institutions for the purpose of making public issues for equity or loan without the prior consent of the Company.

#### 13.2 **Disclosure**

The Company expects the Manufacturer to disclose this Agreement to statutory authorities, if so required, after giving prior written intimation to the Company. Any claim raised against the Company by any authority due to non-disclosure/part disclosure of the terms and conditions of this Agreement shall be entirely at the risk and cost of the Manufacturer and the Manufacturer shall keep the Company indemnified against any such claims.

#### 14. **Records & Inspection**

##### 14.1 Records

The Manufacturer will maintain stock and quality control records relating to the manufacture, operating, financial and other aspects of the Products, and will allow the Company access to these records and supply copies of them on request. The Manufacturer will also give the Company a statement of the stocks of Products held by the Manufacturer at the end of each week, such statement to be made available not later than the second working day following the end of the week in question. In addition to the above the Manufacturer shall provide to the Company a copy of the annual audited balance sheet, every year.

##### 14.2 The Manufacturer will use a coding system agreed with the Company for the Products including units, cases, pallets and load coding. The details of this system will be set out in the relevant Specification of each Product.

##### 14.3 Inspection

###### 14.3.1 The Manufacturer hereby authorizes the Company and/or any of its authorized representatives to enter it's Premises at all reasonable times in order to carry out inspection of the Products being manufactured, the raw and packaging materials, their storage, packaging and any other activity being carried out in relation to the Products, all equipment and installations used for the manufacturing of the Products, the accounts and records, to verify the Manufacturer's compliance with the terms of this Agreement.

###### 14.3.2 The Manufacturer shall also if so requested by the Company, provide copies of the documents, records, data, information pertaining to the operating, financial, quality control aspects of the present Agreement and such other information as may be required by the Company relevant to this Agreement.

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- 14.3.3 The authorized representatives of the Company shall include its auditors, employee's, etc.
- 14.3.4 The carrying of this inspection shall not release the Manufacturer or its affiliates from or diminish its legal obligations hereunder.

## 15. Quality Assurance Testing

- 15.1 The Manufacturer will carry out quality assurance testing of the Product Supplies and Products in accordance with the existing methods and procedures employed by the Manufacturer at the Effective Date of this Agreement, subject to such deviation from these as may be agreed between the Company and the Manufacturer. The Manufacturer will not make any changes to the said methods and procedures without prior consultation with the Company, and will not unreasonably disregard any representation made by the Company with regard thereto.
- 15.2 The Manufacturer will submit to the Company free of charge such pre-tested samples of the finished Products, Product Supplies to be used in the manufacturing and packaging of the Products, from each batch of production before the proposed delivery date of the Products or as the Company shall reasonably require from time to time.
- 15.3 The Manufacturer shall devise and implement a finished product surveillance programme as approved by the Company. The function of such programme shall be to detect any form of adulteration, contaminants, and any other substances prohibited by the Company policy or as may be specified by the Company, through the systematic testing of both finished product and ingredients used in the manufacture of the Products.
- 15.4 The Manufacturer shall carry out at the Manufacturer's cost finished product testing in accordance with the Specifications or otherwise in accordance with the Company's written requirements.
- 15.5 The Manufacturer will be required at its cost to take part in the Company "Proficiency Test Scheme", a support provided by the Company for monitoring the effectiveness of the laboratory testing carried out by or on behalf of the Manufacturer.
- 15.6 The Company may require finished product to be analysed at the Company's laboratory, at the Manufacturer's cost.
- 15.7 In addition, the Manufacturer shall also keep 'reference samples' as may be indicated by the Company from time to time or failing such indication, as good manufacturing practices dictate. Such samples as well as the corresponding reference samples retained by the Manufacturer shall be kept in good storage conditions as may be mutually agreed between the Parties.
- 15.8 The Company shall for such period(s) as it sees fit have the right to post a technical representative(s) to the Manufacturer's Premises and the Manufacturer hereby agrees to provide such representative(s) all necessary office and other facilities.



## **16. Defects**

- 16.1 Save and except provisions of sub-clause 4, if any batch of the Products or part thereof is found, either before or after delivery, not to fulfil the requirements of Clauses 7, 8 and 15 hereof, the Company shall be entitled to refuse delivery of the said batch of production and/or to return the relevant Products within the warranty period stipulated in Clause 17 hereof, as a result of which the Manufacturer shall replace such quantities of the Products with the products of acceptable quality as per specifications prescribed and reimburse to the Company the actual transportation costs incurred as a result of such refusal.
- 16.2 If the Manufacturer fails to replace the defective Products with Products of acceptable quality as per specifications, the Company is entitled to recover the Landed Price of the rejected Products either by way of adjustment against any payments due to the Manufacturer or separately as per Company's option.
- 16.3 Without prejudice to the provisions of Sub-clauses 1 & 2 above, the Company's rights under these clauses are in addition to and not in lieu of any other remedies available under this Agreement or provided by law. The Manufacturer will not substitute non-conforming Products without the Company's prior written approval. The Manufacturer is not entitled to use such non-conforming Products for its own or any other purposes and the Manufacturer shall, upon request of and as instructed by the Company, dispose such non-conforming Products at its own cost and as instructed by the Company.
- 16.4 Once manufactured, the Products will be formally released using the procedures (including QMS) agreed in writing between the Parties accompanied by a certificate of analysis with respect to the finished Product and the material used for manufacture of the Product.

## **17.1 Warranty**

- 17.1 The Manufacturer warrants that the Products supplied shall be of good merchantable quality and free of defects, for a period up to the expiry of the "Best Before" month declared on the packs.
- 17.2 The Manufacturer warrants that in order to ensure food safety, it shall at all times comply with Company's FSMS policy (current FSMS Checklist, FSMS Regulatory Checklist and GLP Manual are attached herewith as Annexure – 2 herewith, changes if any shall be initiated by the Company to the Manufacturer from time to time) failing which products manufactured during the time could be recalled for which the entire responsibility shall be with the Manufacturer. The Manufacturer shall implement all the suggestions made to improve quality standards within the reasonable time frame on continuous basis. The Manufacturer acknowledges the Company's right to carry out food safety audits and the Manufacturer agrees to implement the recommendations made therein.
- 17.3 The Manufacturer warrants to the Company that the Products produced, packed stored or shipped for the Company under the Agreement shall comply with all applicable Central, State and local laws, rules & regulations and guidelines; shall comply with the terms and conditions

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of this Agreement; shall meet Company's specifications, formulas, manufacturing process and quality control standards and shall be wholesome, merchantable fit for its intended purpose and fit for human consumption.

- 17.4 The Manufacturer warrants and guarantees on an ongoing basis that the Products will be of good quality and fit for their purpose, will be free from any defect and will comply with the Specifications, the Quality Standards and with any legislation and all applicable laws where the Products are received, destined or used and shall be packed in accordance with the Specified Packaging and with any samples previously provided by the Manufacturer and approved by the Company; and
- 17.5 The Manufacturer warrants that the Products shall be of merchantable quality and free from any defect, and duly comply with all statutes, regulations, orders and other enactments having the force of law (whether present or future) relating to the manufacture and sale of the Products.
- 17.6 Without limiting any other provision contained within this Agreement, the Manufacturer warrants to the Company that Product Supplies or ingredients sourced by the Manufacturer and utilized in manufacturing or packaging the Products shall be fit for their purpose and use.
- 17.7 The Company may reject any Products, which do not comply with the above warranties and return them to the Manufacturer at the Manufacturer's cost.
- 17.8 The above clause shall apply only for such defects, which occur within the BEST BEFORE period specified on the pack.
- 17.9 The above Clauses shall not in any respect exclude or limit the operation of any terms or conditions implied into this Agreement by statute or common law.
- 17.10 The Manufacturer warrants and guarantees as on the date of this Agreement and on an ongoing basis that it has carefully reviewed and understood the Nestlé Supplier Code (latest version as published on [www.Nestle.com](http://www.Nestle.com)), and acknowledges that it is committed not to do anything by action or by omission that could be in breach of these principles, or that could lead Nestlé or any of its personnel to be in breach of those principles.

#### 18. Delivery, Title and Risk

The Manufacturer shall arrange for delivery of the Products as per delivery instructions from the Company. The title to the Products and correlative risk shall remain with the Manufacturer until the Products have physically been delivered to the Company as per the Company's instructions. No constructive delivery whatsoever shall operate to pass the risks to the Company.



**19. Technical Support**

The Company may on request of the Manufacturer, provide/arrange technical support for handling and processing the raw material and for manufacture of the Products. All the costs for such technical support shall be borne by the Manufacturer and may form part of the overall Product cost.

**20. Intellectual Property Usage**

- 20.1 Nothing in this Agreement shall be considered or is intended to confer on the Manufacturer any right or interest in any right or interest in any the Company Intellectual Property used in connection with the Products and/or the Specified Packaging and the Manufacturer will not represent in any way that it has any title or right to the ownership, registration or use thereof.
- 20.2 Nothing in this Agreement shall be considered or is intended to confer on the Company any right or interest in any of the Manufacturer's Intellectual Property used in connection with the Products and/or the Specified Packaging and the Company will not represent in any way that it has any title or right to the ownership, registration or use thereof.
- 20.3 The Company is authorized to authorize and agrees to authorize the Manufacturer, to use such the Company Intellectual Property on a non-exclusive basis, for the duration of this Agreement only, on or in connection with the Products and/or Specified Packaging and solely in connection with the performance of its obligations under this Agreement, to the intent that all goodwill relating to the same will accrue to The Company and/or the trademark owner. The Company shall be entitled in its absolute discretion to determine in every instance the manner of presentation and such other measures necessary or desirable to secure compliance with the foregoing provisions of this Clause and its own internal procedures and policies.
- 20.4 All material, including without limitation, documentation, Specifications and artwork provided by or on behalf of the Company to the Manufacturer for use on or in relation to the Products and/or the Specified Packaging (and the Intellectual Property Rights in it) are, and shall remain at all times the property of the Company and/or the trademark owner and will be delivered on request to the Company by the Manufacturer.
- 20.5 The Manufacturer agrees not to use in its business any trade mark, trade name, design or other get-up which is the same and/or similar to any of the Company Intellectual Property as to be likely to cause deception or confusion.
- 20.6 The Manufacturer acknowledges the Company and/or the trademark owner, owns the Company Intellectual Property. The Company acknowledges the Manufacturer owns the Manufacturer's Intellectual Property excluding, for the avoidance of doubt, the New Intellectual Property, which the Company and/or its parent company shall own.
- 20.7 The development, adaptation, modification and/or improvement of or to the Company Intellectual Property (howsoever created) shall vest in and be owned by the Company.



- 20.8 To the extent that the Intellectual Property Rights detailed in Sub-Clause (7) above, do not vest automatically in the owning party, the other Party hereby irrevocably and automatically assigns to the owning party and/or the trademark owner, all rights, title and interest in and to the relevant Intellectual Property Rights and will execute all documents as required by the owning party, including where necessary obtaining any assignments from third parties.
- 20.9 For the avoidance of doubt, notwithstanding the provisions of this Clause 20, neither the Manufacturer nor anything in this Agreement shall prevent the Company manufacturing and/or selling the Products, Specified Packaging from using the final Specification and/or recipes and/or Know-How in relation to the Products and/or the knowledge of its own or any third party's personnel, during the term of this Agreement and after its termination/expiry, free from any charge.
- 20.10 For the duration of this Agreement, each Party shall immediately give notice in writing to the other setting out the facts in reasonable detail if it becomes aware of any:
- (a) infringement or suspected infringement of a third party's Intellectual Property Rights; or
  - (b) claims made or threatened that the other Party's Intellectual Property Rights infringe the rights of any third party.
- The notifying Party shall make no comment or admission to any third party in respect of such infringement, suspected infringement or claim and shall provide such cooperation or assistance in defence as the other Party shall reasonably require.
- 20.11 In the case of any actual, threatened or suspected infringement by any third party of Intellectual Property Rights owned by any Party hereto (the "First Party") which comes to the other Party's attention:
- (a) the First Party shall in its sole discretion decide what action if any to take and shall have sole control over and conduct of all relevant claims and proceedings. Except, in the case that the Manufacturer decides not to or fails to take any action, the Company may serve a notice on the Manufacturer and take action itself at its own expense;
  - (b) the other Party hereto shall provide the First Party with all assistance it may reasonably require in the conduct of any such claims or proceedings subject to the payment of the other parties' reasonable costs; and
  - (c) the First Party will bear the costs of any proceedings and shall be entitled to retain for its own account all sums recovered.
- 20.12 If either Party learns that any third party claims that the other parties' Intellectual Property Rights or any part thereof is invalid or any part thereof is otherwise attacked or attackable, that Party shall immediately notify the other Party in writing giving particulars and shall make no comments or admissions to any such third party in relation thereto.



- 20.13 It is expressly understood by the Manufacturer that any development, improvement, discovery and/or invention made or conceived or first reduced to practice by it, basis the Confidential Information and/or modifications thereof, whether patentable or not, shall be the exclusive property of the Company and the Manufacturer undertakes to irrevocably assign all intellectual property rights to the Company or its nominees favour. The Manufacturer, further agrees and undertakes that it will execute such further documents and do such further things (including obtaining formal assignments) as are required to perfect the Company's title to the intellectual property right in the development, improvement, discovery and/or invention.
- 20.14 The Manufacturer agrees that all results that include receipts jointly developed pursuant to this Agreement and all Intellectual Property Rights including the New Intellectual Property, in the results shall be the exclusive property of Nestlé (such rights to include, without limitation, the right to register protection for that Intellectual Property Rights) and Nestlé shall also be the exclusive owner of all tangible property rights and Intellectual Property Rights in such results.
- 20.15 The Manufacturer warrants and represents that the content, use or exploitation of the results by Nestlé will not infringe the Intellectual Property Rights of any third party.
- 20.16 If there is a requirement to use the Intellectual Property of any third party, the Manufacturer shall inform Nestlé immediately and shall cooperate in good faith with Nestlé for securing the necessary rights to use the third party's Intellectual Property.
- 20.17 The Manufacturer hereby assigns irrevocably, in perpetuity, throughout the universe, exclusively to Nestlé, with full title guarantee the Intellectual Property Rights and all other rights in the recipes jointly developed by the Parties, free and clear from all third party rights, liens, claims and encumbrances, for use in whole or in part, alone or in conjunction with any other material, any and all media, formats, whether in current use, existing in research or prototype stages, or not yet come into existence. The Manufacturer shall also waive any moral rights in the recipes.
- 20.18 The Manufacturer shall forthwith make available and permit the Company to collect all copies of the Specifications, recipes, technical data, manufacturing instructions and any other information relevant exclusively to the production of the Products and/or the Product Supplies and any designs, drawings, or artwork in relation to the Products and any other information and/or documents necessary to perfect the Company's rights hereunder and vest the New Intellectual Property in the Company hereunder and no copies shall be retained by the Manufacturer.

## 21. Consumer Complaints

It is agreed between the Parties that for the sake of administrative convenience, all consumer complaints arising out of manufacture of the Products shall be jointly handled by the Company and the Manufacturer. The Manufacturer shall provide all the necessary co-operation in this regard including thoroughly investigating the same and providing information of the same, to the Company within the agreed timeline/s. The Manufacturer



shall, however, be solely responsible for complaints arising out of breach of its obligations with respect to all matters relating to manufacture of the Product. Further, as agreed the Manufacturer should ensure implementation of corrective action identified to prevent repetition of the same.

**22. Non disposal**

The Manufacturer shall not release, dispose or rework any Products, any proprietary ingredients that may be made available by the Company and any packaging material bearing the trade marks or design of the Company, found or alleged to be defective without the Company's prior approval in writing. Further, in addition to the above, the Manufacturer shall render the rejected/defective promotional/printing items un-useable, with a view to protect its intellectual property rights including but limited to brand name/mark, trade-marks, by performing the following:

- (i) Perforation (reels, printed/Nestlé Shaped plastic containers);
- (ii) Shredding (labels, duplex, shippers, small rigid plastic like spoons);

Or, any other steps that the Company may from time to time advise to the Manufacturer to render the material unfit for any further use in any form.

It being further agreed that non-compliance by the Manufacturer with any of the Company's advised steps, for making the defective/rejected material un-useable, will be considered as a material breach of the terms and conditions of this Agreement, entitling the Company to terminate the Agreement in accordance with Clause 26 below.

**23. Indemnity**

The Manufacturer will indemnify, defend and hold harmless the Company and their respective officers, directors, employees and agents (collectively the "Indemnified Persons") from and against any and all losses, claims (of whatsoever nature, which shall include claims at the instance of a purchaser of any of the Products, a representative of his/her estate or his/her dependents, which may be made against the Company due to illness, injury, death, or other damage suffered by any consumer of the Products), costs, liabilities, judgments, expenses or damages (including without limitation reasonable attorney's fees) that the Indemnified Person may incur or suffer or likely to incur or suffer as a result of or arising out of breach of this Agreement, any representations or misrepresentations made by Manufacturer under this Agreement and due to any activity carried out pursuant to this Agreement. Provided that the Manufacturer shall not in any way be liable to Company for any damage which can be demonstrated to be not related to obligations of the Manufacturer under this Agreement.

**24. Taxes and Duties**

**24.1** The Manufacturer shall ensure compliances with all requirements under Goods and Services Tax Act, and rules and regulations made thereunder (**GST Law**), including obtaining and maintaining a valid GST Registration during the tenure of the Manufacturing Agreement for

*[Signature]*



the place(s) from where supply is made, documents and compliances that may be applicable in such form and manner as may be prescribed under the GST Law that may be necessary to enable or assist the Company to claim or verify any input tax credit, set off, rebate or refund in relation to GST applicable in respect of any supply under this Agreement. The Manufacturer and Company shall promptly reconcile and resolve any mismatch or discrepancy, reflected through GSTN matching or otherwise, to ensure that Company avails eligible credit without delay.

- 24.2 In the event that input tax credit of the GST charged by the Manufacturer is denied to Company due to any reason attributable to the Manufacturer, the Company shall be entitled to recover such amount from the Manufacturer by way of adjustment from any payments to the Manufacturer. In addition to the amount of GST, the Company shall without prejudice to the provisions of Manufacturing Agreement shall also be entitled to recover interest payable under GST Law, and penalty, in case any penalty is imposed by the tax authorities on the Company.
- 24.3 The Manufacturer shall in accordance with the GST Law, return all inputs and capital goods (if applicable) supplied by the Company within the prescribed time limits, basis instructions provided from time to time.
- 24.4 The Manufacturer shall immediately inform the Company of any proceedings that may lead to suspension/ cancellation of GST registration. In the absence of a valid GST registration for any reason, the Company shall notwithstanding anything contrary to the provisions of Manufacturing Agreement, be entitled to terminate the Manufacturing Agreement with immediate effect, at the sole cost and consequence of the Manufacturer.
- 24.5 In case of any advance payment by the Company to the Manufacturer, the Manufacturer shall issue advance receipt voucher as per GST Law and pay tax, if prescribed and upload the details in prescribed Form/s on GSTN within the time prescribed under GST Law.
- 24.6 In the event that the Manufacturer fails to comply with GST Law, the Company shall not be liable to make any payment against such invoice and the Manufacturer shall be solely responsible and liable for all consequences. In event the Manufacturer does not deposit GST, then without prejudice to provisions the Manufacturing Agreement and notwithstanding anything contrary to the provisions of Manufacturing Agreement, the Company shall be entitled to terminate the Manufacturing Agreement with immediate effect and the Manufacturer shall be liable to pay such damages as may be reasonably estimated by the Company.
- 24.7 The Manufacturer shall disclose the terms and conditions of this Agreement and all amendments thereto to the appropriate authorities and furnish a copy of the Agreement and amendments thereto to the appropriate authorities, where applicable.
- 24.8 The Taxes, if any payable on delivery of the Products shall be to the Company's account.



24.9 The Reimbursement of taxes detailed in this clause covers only taxes arising out of deliveries of the Products to the Company and does not include the Manufacturer's corporate taxes or any other direct taxes that may devolve on the Manufacturer.

24.11 If the Manufacturer receives a refund of any of the taxes, fees and charges, the Manufacturer shall pay the amount of the refund to the Company. The Manufacturer shall be solely responsible for paying any taxes, direct or indirect, state or local, whether payable in India or elsewhere which are necessary because of the Company's payment. The Company shall be entitled to deduct from such payments, taxes and levies which it is allowed or required to deduct under Law.

#### 25. Capital Subsidy/Tax Concessions

The Manufacturer agrees that any tax concessions/ Capital subsidy, etc. if any available presently or in future, with respect to the operations undertaken under this Agreement shall be duly compensated to the Company by way of adjustment of the Manufacturing Expenses payable under this Agreement. All formalities, permissions etc. required for availing such concessions/ subsidies shall be the responsibility of the Manufacturer.

#### 26. Term & Termination

##### 26.1 Term

This Agreement shall become effective from the Effective Date and shall initially remain in force and effect for a period of 3 (three) years from the Effective Date, after which it may be renewed for such periods as may be mutually agreed upon in writing by the Parties. Either Party shall be entitled to, without assigning any reasons terminate this Agreement by giving 6 (six) months written notice to the other Party.

In the event that the Parties continue dealings after expiry of this Agreement, till such time a renewal/ fresh agreement is signed, it is agreed that Parties shall continue to perform the obligations cast under this Agreement on the same terms and conditions, as if this Agreement was in force.

##### 26.2 Termination In Special Circumstances

Notwithstanding anything contained in Clause 26.1 hereof, this Agreement may by notice in writing be terminated with immediate effect at the option of either Party hereto (hereafter the "Terminating Party") in any of the following events, namely:

- i) if the other Party to this Agreement shall default in the performance of any of its obligations hereunder and such default has not been remedied within 30 (thirty) days after written notice of such default has been given to the defaulting party;
- ii) if the other Party hereto shall go into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation or shall commit an act of bankruptcy or shall



compound with its creditors generally, or if a receiver or judicial manager shall be appointed over the whole or a substantial part of the assets of such other Party;

- iii) if the other Party hereto or the whole or a substantial part of its assets shall pass under the control of any authority, person or company of which the terminating Party shall have reasonable cause to disapprove;
- iv) if Nestlé ceases to market the Product.

#### 26.3 Termination By The Company

Notwithstanding anything contained in Sub-clauses (1) and (2) hereof, the Company shall have the right to terminate this Agreement with immediate effect by notice in writing if it shall at any time have sufficient reason to believe that any part or parts of the Confidential Data referred to in Clause 13 hereof has been disclosed or used in any manner which in the Company's opinion may be detrimental to the Company, the Proprietor of the Confidential Data, or to any of the trademarks under which the Products are to be sold or the Manufacturer has caused a material breach of the terms and conditions of this Agreement or has in any manner whatsoever caused damage to Nestlé's brands or reputation.

- 26.4 Notwithstanding anything to the contrary contained herein the Company shall have the right to terminate this Agreement forthwith after giving a curing notice of 15(fifteen) days without any cost or consequences upon failure of the Manufacturer to achieve commercial production on or before 31<sup>st</sup> December, 2018 and/or the Manufacturer's failure to obtain the requisite certifications as set out in Clause 31.2 below by 31<sup>st</sup> December, 2018 and/or Manufacturer fails to comply with applicable laws. The termination shall be in addition to and not in derogation to the other rights and remedies available in law.
- 26.5 In the event of termination under Clause 26.1, the Party on which notice of termination is served shall be liable for all costs and expenses necessarily incurred by terminating Party ("Terminating Party") arising as a direct result of termination to the extent that it was not reasonably practicable for the Terminating Party to avoid these.
- 26.5.1 Provided that where the Agreement is terminated by the Company pursuant to 26.1, 26.2 (ii), (iii), (iv):
  - (a) In case of termination in the initial 3 (three) years of this Agreement, the Manufacturer shall entitled to be compensated for margins that ought to have accrued on remaining quantity out of the total agreed quantity to be manufactured during the initial 3 (three) years period i.e. 2250 MTs of Products;
  - (b) Upon termination of the agreement by the Company in the first year of the currency of this Agreement, Manufacturer shall entitled to be compensated for margins for the non-manufactured volume of 500MT of volume committed for the first year at Rupees 12 (twelve) ; 750 MT of volume committed in the second year at Rupees 7 (seven) and 1000 MT of volume committed in the third year at Rupees 5(five);



- (c) Upon termination of the agreement by the Company in the second year of the currency of this Agreement, Manufacturer shall be entitled to be compensated for margins for the non-manufactured volume of 750MT of volume committed for the second year at Rupees 7 (seven) and 1000 MT of volume committed in the third year at Rupees 5(five);
- (d) Upon termination of the agreement by the Company in the third year of the currency of this Agreement, Manufacturer shall be entitled to be compensated for margins for the non-manufactured volume of 100MT of volume committed for the third year at Rupees 5(five);
- 26.5.2 Provided that where the Agreement is terminated by the Manufacturer pursuant to Clause 26.1, 26.2 (ii), (iii):
- (a) Any claim by the manufacturer for reimbursement of the cost of any ingredient or packaging material purchased in anticipation of the manufacture of the Products shall not exceed the cost thereof, based on the price actually paid by the Manufacturer for such item; and
  - (b) The Company shall be obliged to reimburse to the Manufacturer the cost of the ingredients or packaging materials to the extent of quantities purchased in accordance with Clause 4 tentative rolling orders.
27. **Consequences Of Termination**
- Upon termination of this Agreement, and unless otherwise agreed in writing, Manufacturer shall immediately:
- 27.1 desist from any further use of any of the Confidential Data referred to in Clause 13 hereof and return same in accordance with paragraph (c) of that Clause;
- 27.2 the Manufacturer shall not dispose of any of the Products or Specified Packaging or raw materials supplied by the Company other than to the Company and shall immediately cease use of the Company Intellectual Property including New Intellectual Property;
- 27.3 the Manufacturer shall immediately cease manufacturing and packing the Products and the Company shall have the right forthwith to inspect and collect for its own use from the Manufacturer any supplies of the Products, the Specified Packaging, the Company Intellectual Property and any raw materials supplied by the Company or any materials or raw materials purchased in accordance with Clauses 7 and 8 which the Manufacturer may have in hand at the date of termination;
- 27.4 the Manufacturer shall forthwith make available and permit the Company to collect all copies of the Specifications, recipes, technical data, manufacturing instructions and any other information relevant exclusively to the production of the Products and/or the Specified Packaging and any designs, drawings, or artwork in relation to the Products and any other information and/or documents necessary to perfect the Company's rights under Clause 20.7



and vest the New Intellectual Property in the Company under Clause 20.6 and no copies shall be retained by the Manufacturer;

27.5 Clauses 13 and 23 of this Agreement shall remain in full force and effect following termination;

27.6 In the event of termination under Clause 26.1, the party on which notice of termination is served shall be liable for all costs and expenses necessarily incurred by the other party (the "Terminating Party") arising as a direct result of termination, to the extent that it was not reasonably practicable for the Terminating Party to avoid these, provided that where the Agreement is terminated by the Manufacturer pursuant to Clause 26.1:

(a) any claim by the Manufacturer for reimbursement of the cost of any raw material or packaging material purchased in anticipation of the manufacture of the Products shall not exceed the cost thereof, based on the price actually paid by the Manufacturer for such item; and

(b) The Company shall only be obliged to reimburse to the Manufacturer the cost of raw material or packaging materials to the extent of any quantities purchased in accordance with Clauses 7 and 8.

28. **Further Arrangements By The Manufacturer**

28.1 Save and except as set out in Clause 29 below, the Manufacturer undertakes for the duration of this Agreement, that it will not for the similar products enter into any manufacturing arrangement, which shall include (by way of example only and not by way of limitation) co-packing, franchising, or licensing, with any third party, which will or is likely to compromise the confidentiality obligations and intellectual property rights of the Company under this Agreement. The Manufacturer acknowledges that 6 (six) months' notice period in case of termination at will as set out in Clause 26.1 above, is no way restrictive in any manner whatsoever.

28.2 Whenever during the term of this Agreement, the Manufacturer has spare manufacturing capacity(ies) in its factory which it wishes to utilize, it shall first offer such capacity(ies) to Company. In the event that Company is unable or unwilling to take up such spare manufacturing capacity, then Manufacturer shall be entitled to offer such spare capacity to a third party and, subject to the written consent of Company for any confidentiality issues (which consent shall not be unreasonably withheld), enter into Agreements in respect thereof with said third party.

29. **Non – Compete and Exclusivity**

During subsistence of the Agreement, for the purpose of securing confidentiality of Confidential Data and protecting the Company Intellectual Property Rights and Nestlé proprietary information, the Manufacturer agrees that the Manufacturer shall not directly or indirectly enter into any agreement with any third party for the manufacture or marketing of:

*Abhishek*



- (i) Any Products as provided in Annexure 1 using the same or similar formulae, recipes, specifications;
- (ii) Any Products or similar Products in any part derived from formulae, recipes, specifications, or technologies provided and/or owned by the Company

However, non-compete and exclusivity shall not affect manufacturing and marketing of any formulae, recipes, specifications, or technologies by the Manufacturer prior to the execution of this MOU. The Manufacturer represents that it has existing arrangement with another food and beverage company for the purpose of manufacture of Oats based breakfast mixes and in no manner does the existing arrangement conflicts or inhibits or restricts the rights and obligations as set out herein or due performance of this Agreement by the Manufacturer.

### 30. Inability to Perform

In the event that either party hereto shall be rendered wholly or partly unable to carry out its obligations under this Agreement by reason of causes beyond its control including (but not by way of limitation) fire, flood, explosion, action of the elements, acts of God, accidents, epidemics, strikes or lockouts, business disruptions, insurrections, riots or other civil commotion, war, enemy action, acts, demands or requirements of the Governments in any state or by other causes which it could not reasonably be expected to avoid, then the performance of the obligations of either party or both as they are affected by such causes shall be excused during the continuance of any inability so caused, but such inability shall as soon as possible be remedied. In case the Force Majeure event lasts for more than 45 (forty five) days, this MOU Agreement shall stand automatically terminated, unless Parties agree otherwise.

### 31. Legal Responsibilities

- 31.1 The Manufacturer warrants that the finished Products shall be of satisfactory quality and fit for their purpose within the meaning of and in compliance of any and all applicable laws and regulations. The Manufacturer shall adhere to all the Specifications, labelling and packaging requirements and instructions issued by the Company from time to time, for ensuring compliance of Products with applicable Laws including but not limited to the Food Safety and Standards Act, 2006 and Rules and Regulations framed thereunder, Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011, to the extent applicable, or any other law for the time being in force relating to food law, and shall be free from any defect within the meaning applied to that word in the Consumer Protection Act 1986 (as may be amended), and without in any way limiting the foregoing, all other statutes, regulations, orders and other enactments having the force of law (whether present or future) relating to the manufacture and sale of the Products.
- 31.2 Without limiting any other provision contained within this Agreement, the Manufacturer warrants to the Company that any Product Supplies sourced directly by the Manufacturer and utilized in manufacturing or packaging the Products shall be fit for their purpose and where any methodology is used in, on or in connection with the Products and/or the packaging it shall not infringe any of the Company's Intellectual Property Rights or other rights of any third party and is not any other way unlawful.

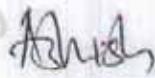
*Anush*



- 31.3 The Manufacturer represents that it has any and all the requisite approvals and permissions from the concerned governmental authorities such as factories licenses, etc. for discharging its obligations, under this Agreement.
- 31.4 The Manufacturer shall comply with all the applicable laws, the license, permissions and approvals that are necessary for the carrying out of the operations under this Agreement and performing its obligations under the Agreement. The Manufacturer will comply with all statutory requirements with regard to Factories Act, Minimum Wages Act, Workmen's compensation Act, National and Festival Holidays Act, Industrial Disputes Act, Employees' PF Act, ESI Act, Contract Labour Regulations Act, the Food Safety and Standards Act, 2006 and Rules and Regulations framed thereunder, Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011, Goods and Services Tax law and any other applicable laws for the time being in force that may be applicable for operations under this Agreement.
- 31.5 Without prejudice to the generality of the provisions of Sub-Clauses above, the Manufacturer has represented that it has necessary Registration Certificate/s, from the concerned authorities for the purpose of manufacture and supply of the Products and shall ensure that the validity of the Registration Certificate/s is maintained during the period of this Agreement.
- 31.6 The Manufacturer has represented to the Company that, the Manufacturer shall get an independent firm/ party of repute to confirm legal compliances by the Manufacturer, on a half yearly basis and address any deficiency immediately to avoid recurrence.
- 31.7 The Manufacturer will not take recourse to any act which purports to undermine the reputation, goodwill and competitiveness of the Company and the Products.

### 32. Representation

- 32.1 The Manufacturer undertakes and states the signing and execution of this Agreement and performance of the obligations by the Manufacturer mentioned in this Agreement does not violate or contravene any of the provisions of any law and/or commercial contract and arrangement already executed by the Manufacturer with any third party. The Manufacturer shall keep the Company indemnified if any claim is raised by any third party alleging contravention of any subsisting agreement and shall also compensate the Company for the loss incurred including loss of profit in the event, the Manufacturer is not in a position to manufacture the Products due to any reason attributable to misrepresentation and consequent stoppage of the Products.
- 32.2 The Manufacturer represents that it is in the process of obtaining ISO 22000 (including PAS 220), Sedex, FSSC 22000 and ISO 90001, ISO 14001, OHSAS 18001 certifications which are pending and will maintain the same and provide copies of the audit reports to the Company on a regular basis. The Manufacturer shall ensure that pre-audits are completed for these certifications before the Effective Date i.e. commencement of commercial production.



- 32.3 The Manufacturer represents that it shall notify to Nestlé:
- Any governmental inspection or audit of its plant;
  - Of the presence in its plant of harmful bacteria (e.g. Salmonella, Listeria, etc.);
  - Certain toxins or allergens, or any bacteriological agent considered as being indicative of unsanitary practices or of public health concern.
- 32.4 The Manufacturer represents that it shall keep all the necessary licenses, permits and consents valid and subsisting during the term of this Agreement. Manufacturer further represents that the signatory to this Agreement is duly authorized to sign this Agreement.
33. **Governing Law & Jurisdiction**
- 33.1 This Agreement shall be governed by laws of India.
- 33.2 The Parties hereto agree that they shall use all reasonable efforts to resolve between themselves any disputes, controversy or claim arising out of or relating to this Agreement. In particular, the Parties agree that discussions will be carried out between senior level officers of the Parties within a maximum period of 30 (thirty) days from the date that written notice of the details of the issue in dispute, controversy or claim shall have been given by one Party to the other.
- 33.3 If the Parties fail to resolve the matter in accordance with the preceding paragraph and within the period prescribed therein, the courts at Delhi, India shall have exclusive jurisdiction to adjudicate the matter.
34. **Notices**
- 34.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by registered post to a party at the address set out below for such party or such other address as either party may from time to time designate by written notice to the other.
- 34.2 For the purposes of this Sub-Clause (1) the address of each party shall be:

The Company	Nestlé India Limited
Attention	: Manmeet Aneja
Address	: Nestlé House, Jacaranda Marg, 'M' Block, DLF City, Phase-II, Gurugram - 122 002, Haryana
Telephone	: 0124-3321221
Email	: Manmeet.aneja@in.Nestle.com
The Manufacturer	Symega Food Ingredients Limited



Attention	: Subash T K
Address	: No.XI/312 G, Synthite Taste Park, Pancode, Near Kolenchery, Kerala - 682310
Telephone	: 0484-27 34636
Email	: subhash@symega.com

- 34.3 Any such notice or other document shall be deemed to have been received by the addressee two working days following the date of dispatch if the notice or other document is sent by registered post or simultaneously with the delivery if sent by hand.

#### 35. Acknowledgement

Except for minimum commitment under Clause 3 of the Agreement, the Manufacturer hereby acknowledges and affirms that it has made its own independent investigation, analysis and evaluation for entering into this arrangement and Nestlé is not guaranteeing any income or return on the investments made or to be made by it in connection with or in pursuance to this Agreement.

#### 36. Assignment

This Agreement may not be transferred, sold or assigned in whole or in part by the Manufacturer to any other person or entity, whether by operation of law or otherwise, without having previously obtained the consent in writing of Nestlé. In addition the Manufacturer may not sub-contract the manufacture of the Products or any part thereof or any hygiene or quality control matters relating to the Products or their packaging to any other person save with Nestlé's prior written consent.

#### 37. Miscellaneous

- a) No Partnership: Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership between the Parties, and no Party shall hold itself out as an agent for the other Party, except with the express prior written consent of the other Party and the relationship shall be on principal to principal basis.
- b) Time: Any date or period as set out in any Article of this Agreement may be extended with the written consent of the Parties failing which time shall be of the essence.
- c) Independent Rights: Each of the rights of the Parties hereto under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of the Party, whether under this Agreement or otherwise.
- d) Counterparts: This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same

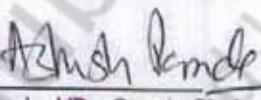


document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

- e) **Authorized Persons:** The Company shall intimate the Manufacturer in writing, from time to time, of the persons authorized to deal with the Manufacturer under this Agreement and only acts of such authorized persons shall be binding on the Company.
- f) **Variation:** No variation of this Agreement (including its Annexures) shall be binding on any Party unless such variation is in writing and signed by each Party.
- g) **Waiver:** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same of any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.
- h) **Severability:** If any provision of this Agreement is invalid, unenforceable or prohibited by law, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from any Party hereto to the others, and the remainder of this Agreement shall be valid, binding and of like effect as though such provision was not included herein.
- i) **Costs:** Each Party will bear their own costs and expenses incurred in relation to the negotiation, preparation and execution of this Agreement.
- j) **Entire Agreement:** This Agreement supersedes all oral and written representations and agreements between the Parties including, but not limited to any earlier agreement relating to the subject matter hereof.

IN WITNESS WHEREOF THESE PRESENTS HAVE BEEN EXECUTED ON BEHALF OF THE PARTIES HERETO AT THE PLACE AND AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

. Signed by for and on behalf of  
NESTLÉ INDIA LIMITED  
BY Ashish Pande

  
Senior VP – Supply Chain

the presence of:

Signed by for and on behalf of  
Symega Food Ingredients Limited  
BY Santhosh Stephen

Authorised Signatory

the presence of:



**ANNEXURE -1**

**PRODUCTS**

Ready to Eat Instant Poha  
Ready to Eat Instant Upma

CONFIDENTIAL  
Anubhav  
anubhav.food.ingredients.limited.com  
anubhav@jlsalaw.com  
08/04/2021 09:24 AM

Rishabh



- 28 -



**ANNEXURE-2**  
**General Quality/Processing Instructions**

1. Manufacturer shall produce, package, store and ship product in accordance with the Company guidelines and in strict compliance with specifications, quality control standards as laid down in the established Quality Monitoring Scheme (QMS) which will be updated as and when required. The QMS will include specifications and tests of raw materials including packaging materials as well as the tests to be performed as a release criteria for semi finished products and any other quality related parameter. QMS must include Operational Pre-requisite procedure (OPRP), Critical Control Point (CCP), Control Point (CP) and Regulatory Control Points (RCP). This includes analysis of water as per QMS, Indian Standard of portable water from NABL accredited laboratory and WHO analysis.
2. The Manufacturer shall provide all the necessary inputs/co-operation for handling of Complaints (Consumer/Trade) related to product produced, which includes thorough investigation and providing information to the Company within the given timeline/s. The Manufacturer shall be solely responsible for complaints arising out of breach of its obligations with respect to all matters relating to manufacture of the Product. Further, the Manufacturer should ensure implementation of corrective action identified to prevent repetition of the same, which may involve investment as well.
3. The Manufacturer will undertake to manufacture "the Product" strictly in compliance with Certifications, Licenses, recipe, processing parameters, layout and facilities as instructed by the Company including Regulatory/legal norms applicable in the manufacturing and importing country.
4. The Manufacturer shall prepare and submit to Company the quality records and reports [Daily/monthly/quarterly/yearly] as per established formats, which shall be provided by the Company from time to time.
5. If any Manufacturer's facility, process inventories or equipment are in unsanitary conditions or do not otherwise comply with applicable company requirement and regulations/laws rules and indicate non-compliance, if any, with laid down good manufacturing practices Manufacturer shall promptly take action to correct the deficiency.
6. Manufacturer shall ensure that procurement of Raw Material and Packaging Material is done only from the approved vendor list, which is shared by Company. In case of any deviation, manufacturer shall inform to company, prior to sourcing. Manufacturer also ensure the release management of intended RM/PM as per guideline of the Company.
7. The Company shall reject according to the criterion defined in QMS, "the products" which have been produced and packaged during a particular run if samples of the production do not confirm to the specifications, formulas and standards set forth in the QMS or there has been an abnormal variation in the process. The Manufacturer should also block production adjoining incriminate period to ensure no defective product pack is released.



8. The Manufacturer shall make available the processing data log sheets and analytical results to the Company representative as per QMS for the purposes of release of products under manufacture, Records may be asked by mail or in physical Hard copy during visit of company representative.
9. The Manufacture shall implement all the requirements of Good manufacturing practices (GMPs) throughout the manufacturing chain as applicable for the product being manufactured which includes personnel, factory environment, incoming goods, processing, maintenance, foreign matter control, storage practices, pest control activities, Mandatory Hygiene Related Points of Entry Requirements to Factory Production Areas and uniform Policy.
10. The Manufacturer shall review and update the HACCP system and QMS annually or as when there is any change in line with NFSMS/process requirements.
11. The Manufacturer shall ensure implementation of Good laboratory practices (GLP) as per the GLP requirement of the company, for ensuring reliability of analytical results. The manufacturing unit shall participate in P test conducted by the company and should strive to remain excellent in the same.
12. The Manufacturer shall ensure good instrument calibration plan programme in place for reliability of measuring devices as per the Nestlé calibration requirement. Further CCP/OPRP related instruments need to be calibrated once a month.
13. The Manufacturer shall ensure full traceability system from raw material, Packaging Material, intermediate material to finished goods dispatch. The traceability system must be tested at appropriate frequency (as per Nestlé requirement) to verify its effectiveness. In case of any crisis situation the Manufacture should support the company in providing the required information in a timely manner, in the format prescribed by the Company.
14. The Manufacturer shall ensure implementation of document control system for effective control of documents. Manufacturer shall implement/adhere to new Requirement/ Documents arises related to manufacturing/product as and when shared by the company.
15. The Manufacturer is required to keep reference samples and follow Keeping Quality Test (KQT) monitoring plan, given by the Company. Results of KQT must be evaluated and submitted to the Company on 6 (six) monthly basis or before if any deviation.
16. The Manufacturer shall ensure good instrument calibration plan programme in place for reliability of measuring devices as per the Nestlé calibration requirement. Further CCP/OPRP related instruments need to be calibrated once a month.
17. The Manufacturer shall ensure good system in place and to appoint a person to respond the consumer complaints and Form (ex. VA/B - generated by authority of Manufacturing/Importing country) in timely manner and in template provide by Company.



18. Internal quality audit system of the Manufacturer should be in place and must be conducted at appropriate frequency by cross functional team to verify the effectiveness of the implementation of NFSMS. Findings during the internal audit by the Manufacture and during any verification/ audit by the Company must be closed within accepted timeline.
19. The Manufacturer shall ensure that all production personnel will have undergone the minimum training in Operation, Hygiene, Compliance (such as medical checkups & vaccinations etc.) and food safety required to implement FSMS.
20. The Manufacturer shall appoint competent personnel in quality and manufacturing sections who shall manage NFSMS throughout the Premises by understanding, implementing and reviewing the NFSMS.
21. Manufacturer shall support in regular assessment by company representative to assess the compliance to company requirement and for further improvement.
22. The Manufacturer acknowledges that it has received, read and understood the policies mentioned herein and hereby agrees to comply with the applicable policies by signing the duplicate copy of the same and returning it to the Company.

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ANNEXURE-3  
Manufacturing Expenses / Pricing Methodology

**Pricing methodology - Symega for 1<sup>st</sup> THREE years from the date of commencement of production.**

Symega will raise FG invoices for stocks dispatched to Nestle on daily basis at price which will be calculated on the basis of the below mentioned pricing methodology:-

**Price = Raw and packing Material Cost (including Manufacturing Losses) + Manufacturing / conversion Fees + Freight Charges + GST**

**Raw and packing Material Cost**

- Symega will purchase raw and packing materials from Nestle approved suppliers.
- The Raw and packing material price will be basis actual cost from the approved suppliers and on approved rates, plus freight charges if any. Raw and packing material cost shall be landed cost at Symega net of IGST / GST as per GST guideline/ rules.
- Nestle will fix RM rates and other terms & conditions and Symega will only procure RM and PM from Nestle approved vendors basis Nestle technical specs.

**Manufacturing Losses**

- RM & PM tentative losses will be considered in costing, which will be subject to actualization on quarterly basis. Conversion fees will not be part of manufacturing loss calculations.
- The final losses for future costings will be agreed basis actual production losses in of 1st three months.

**Manufacturing / conversion Fees**

- Manufacturing fees will comprise of all fixed cost & Variable cost including depreciation on equipment's, facility used for manufacturing, storage & loading/unloading of RM, PM & FG, finance cost, all administrative costs (such as salaries/wages) and profit margin.
- Manufacturing fee for first three years from the date of commencement of production is as below :

Volume	1 ST YEAR - Volume 500MT		2 ND YEAR - Volume 750 MT **		3 RD YEAR - Volume 1000 MT **	
Product Description	INSTANT UPMA	INSTANT POHA	INSTANT UPMA	INSTANT POHA	INSTANT UPMA	INSTANT POHA
Conversion rate/kg	55.69	57.92	40.69	52.92	48.69	50.92

\*\* Conversion rates for second and third year to be revised based on the Wholesale Price Index (WPI) as it stands on the first day of the respective years. The base price for calculation is as given above.

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**Volume commitment (with variance of 15% +/-):**

	Volume MT
Year 1	500
Year 2	750
Year 3	1000
<b>Total</b>	<b>2250</b>

The total minimum commitment is 2250 MT and the margin for three years combined is Rs 1.625 Crores

- For any volumes above 15% of annual volume – only variable expenses + Margin to be billed. i.e for volume above 575 tons in FIRST year, the billing should be @ Rs.38.45 per kg for Upma & @Rs.40.68 per kg for Poha.
- For any volumes below 15% of annual volumes - only fixed expenses + agreed margin to be billed. i.e. for volume below 425 tons in FIRST year, the charges towards recovery of fixed costs + Margin @ Rs.29.24 per kg for both Poha & Upma.

**Liability in case of rejection of Finished Goods**

- Symega will be liable to compensate Nestle for any rejection of Finished Goods due to not adhering to release parameters of RM & PM and manufacturing process as defined in QMS as shared with Symega.
- In case, the finished product manufactured by Symega has any quality defect during its declared shelf life, root cause analysis to be done on product quality defect and basis final outcome decision to be taken for debiting or not debiting Symega.
- In case, finished product duly released by Symega and subsequently damaged in transit, bad storage, or rejected by any reason ( not in control of Symega ) , in such cases Symega will not be liable to compensate. Nestle subject to that Symega has complied all QMS parameters.

