

ACCOUNT REGISTRATION FORM - M C Kelly Ltd

******Please complete in BLACK pen******

Name and Address of Business:

Postcode:

Telephone Number:

Mobile Number:

*Accounts Contact Name and email address:

*This must be someone within your own organisation, if you use third party services we will need a separate authorisation.

Please complete this section if you are a Limited Company, Partnership, LLP, CIC or CIO

Company Registration No. if Limited:

List Names and Residential Addresses of all Directors/Partners:

Please complete this section if you are a Sole Trader

Do you own the business premises? Yes / No

Proprietor(s) Full Name(s):

Proprietor(s) Home Address(es):

Time at Address:

Years

Months

Continued on page 2

All applicants to complete this section

VAT Registration No.(if applicable):		
Time in Business:	Years	Months
Please list any parent or sister businesses:		
Procurement/Kitchen Contact Names:		
Email Address for Offers/Pricing Information:		
Our preferred payment method is by BACS	A/c Name: M C Kelly Ltd Sort Code: 30 84 67 Account Number: 31628960 <i>When making a payment please quote your <u>account reference number</u> as detailed on your invoices/statements.</i>	
Amount of Credit Required: £		
Please select terms you wish to request. Terms will be notified to you in writing. <i>We reserve the right to alter terms accordingly when undertaking a credit review.</i>	<u>Terms</u> Cash on Delivery Monthly Direct Debit (Via GoCardless) Weekly Fortnightly Payment on Statement	

Two food or drink trade references are required for all new accounts: (Name, address & telephone)

1)	2)

M C Kelly Ltd operates a credit collection policy where accounts falling outside of the agreed terms are referred for collection within the statutory time window, we take seriously the need to effect receipt of payment for our supplies within the agreed terms.

General Data Protection Regulations - For our full Privacy Notice, please visit www.mckelly.co.uk. We take seriously the need to protect personal data. Under GDPR we must have a lawful basis for using personal data. This may be because the data is necessary for our performance of a contract with you, because you have consented to our use of your personal data, or because it is in our legitimate business interests to use it. For example - Providing and managing your account - Supplying our products and services to you for which your personal details are required for us to enter into a contract with you - Providing you with information, providing details of our own products or services that you request from us or which we feel may be of interest to you (where you have consented to be contacted for such purposes) or where we have identified a Legitimate Interest -
 - Notifying you about changes to our services. We will always work to comply with our obligations under the GDPR and you will always have the opportunity to opt out.

If you wish to be contacted with special offers, please indicate your agreement by ticking the box.

****By signing this form you are agreeing to our attached Terms and Conditions***

Director(s) / Owner(s) Signature(s):	
Print Name(s):	
Position:	
Date:	

Authorised by : _____ **for M C Kelly Ltd Date:** _____

M C Kelly Ltd - Terms and Conditions

1. INTERPRETATION

Business Day	a day other than a Sunday or bank holiday on which banks in England are open for business.
Buyer	the person who accepts a quotation of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.
Claim	a complaint sent by means of a Notice to the Seller by the Buyer in relation to defect or shortage whether actual or alleged.
Conditions	the standard terms and conditions of sale, as set out in this document.
Consequential Loss	loss incurred by the Buyer or anyone else including but not limited to: loss of profits; loss of contracts; loss of goodwill; damage to reputation; damage to property belonging to the Buyer or to anyone else; personal injury to the Buyer or to anyone else (but only so far as such injury is not caused by the Seller's negligence).
Contract	any contract between the Seller and the Buyer to buy and sell Goods.
Delivery Note	the document issued by the Seller to the Buyer with the Goods.
Goods	the goods (including any instalment of the Goods or any parts of them) which the Seller supplies to the Buyer in accordance with these Conditions.
Notice	a written document sent by either party to the other delivered in accordance with clause 13 of the Conditions.
Order	a request from the Buyer to the Seller for the supply of Goods whether received in writing or orally.
Price List	the Seller's price list as notified or provided to the Buyer from time to time and in force.
Requirement	any statutory or other legislative enactment, regulation or rule from time to time in force, issued by a governmental and/or a competent body relating to the sale and/or storage of the Goods by the Buyer.
Seller	M C Kelly Ltd, a company registered in England with company number 2553793 whose registered office is Lloyds Bank Chambers, Crediton, Devon, EX17 3AH.

- 1.1. In these Conditions the following definitions apply (except where the context otherwise requires):
- 1.2. Clause headings are for convenience only and do not affect the interpretation or construction of these Conditions.
- 1.3. Any references in these Conditions to a person shall include an individual, partnership, unincorporated association, corporation, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity or undertaking whether acting in an individual, fiduciary or other capacity.
- 1.4. Unless the context otherwise requires, any reference in these Conditions to a party means either the Buyer or Seller and any such reference to parties shall be construed accordingly.
- 1.5. In these Conditions words in the singular shall include the plural and vice-versa, and words imputing the male, female and neither gender shall include the other
- 1.6. Any reference in these Conditions to any Requirement, statute or statutory provision shall include any amendment, enactment, re-enactment and any subordinate legislation made from time to time under that provision.

2. TERMS OF SALE

- 2.1. The parties agree to contract on the terms contained in these Conditions which shall prevail over any inconsistent terms which the Buyer may seek to introduce.
- 2.2. These Conditions together with the terms of the Order (if accepted by the Seller) form the entire agreement between the Seller and the Buyer. Save as otherwise provided in these Conditions, there is to be no variation of any Contract.
- 2.3. These Conditions may be amended by the Seller from time to time. The Conditions in force at the time of the acceptance of an Order shall apply to that Order.

- 2.4. The Seller will assume any Order received from an employee, representative or director of the Buyer (or anyone holding themselves out as the same) is genuine without further inquiry.
- 2.5. The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate. A Contract shall be formed on the earlier of:
 - 2.5.1. the Seller's written acceptance of the Order; or
 - 2.5.2. provision of the Delivery Note to the Buyer.

3. PRICE

- 3.1. Unless otherwise agreed between the parties, the price for Goods shall be that stated in the Price List on the date the Order is accepted by the Seller. All subsequent publications of the Price List supersede and take precedence over any previous or other Price Lists.
- 3.2. All prices quoted to the Buyer or contained in any Price List are correct at the time of publication only, but may be subject to an error, omission and other variation. In any event, the Seller reserves the right to refuse to accept an Order.
- 3.3. Unless otherwise stated, prices in any quotation or published in the Price List do not include VAT or any other taxes/duties, charges or fees for handling and/or delivering the Goods.
- 3.4. The Seller may, by giving Notice to the Buyer vary the price of the Goods at any time before delivery.
- 3.5. If the Seller incurs any additional costs (including, but not limited to, storage charges or bank administrative charges) as a result of the Buyer's neglect or default, the Buyer must pay those costs to the Seller in addition to the price agreed between the parties in accordance with the relevant Contract.

4. PAYMENT

- 4.1. The Seller shall be entitled to invoice the Buyer for the price of the Goods plus VAT and any other taxes or duties, on or at any time after delivery of the Goods.
- 4.2. The Seller may at any time require the Buyer to pay for Goods in advance by way of cleared funds or by any other method of payment the Seller may specify to the Buyer.
- 4.3. Time for payment shall be of the essence. If payment is not received in accordance with these Conditions, the Seller may do one or more of the following:
 - 4.3.1. cancel the Contract;
 - 4.3.2. suspend any further deliveries to the Buyer;
 - 4.3.3. appropriate any payment made by the Buyer for Goods supplied by the Seller under any other Contract as the Seller thinks fit; and/or
 - 4.3.4. apply all or any part of any monies the Seller may owe the Buyer for whatever reason, in or towards payment of any sum owed by the Buyer to the Seller;
 - 4.3.5. charge interest on all outstanding monies due to the Seller from the Buyer, from and including the date of the relevant invoice, at the rate of 8% (eight per cent) per year above the Bank of England Base Rate current at the time, or such greater amount as may be allowed under The Late Payment of Commercial Debts (Interest) Act 1998, calculated on a daily basis; and/or
 - 4.3.6. charge the Buyer with (and the Buyer will pay) all costs incurred in the recovery of the due sums, including, but not limited to the costs incurred in contemplation of, seeking, obtaining and enforcing any court order for requiring payment or action by the Buyer, regardless of which court or track such claim may be brought; and/or
 - 4.3.7. exercise any of the Seller's rights to recover possession of the Goods which are in course of transit to the Buyer (Goods are 'in course of transit' from the time the Goods are in the possession of an independent carrier for the purposes of delivery to the Buyer, until such time as the Buyer obtains or is entitled to obtain possession of the Goods); and/or
 - 4.3.8. exercise any of the Seller's rights under clause 6.
- 4.4. The Buyer shall be obliged to pay all VAT and other rates, duties or taxes that may be applicable to the sale of the Goods, in addition to the Price, and such sums shall be payable in addition to the Price, and the payment obligations and rights in this clause 4 shall apply to such sums.

5. DELIVERY

- 5.1. Delivery of the Goods will be by or on behalf of the Seller, unless otherwise agreed.
- 5.2. The Goods may be delivered in advance of any date quoted to the Buyer and upon the Seller giving Notice to the Buyer.
- 5.3. All Goods shall be delivered to the location set out in the Order, or if no location is set out in the Order, the Buyer's address, if known to the Seller.
- 5.4. The Seller shall not be liable for late or failed delivery where such delay or failure results from the Buyer's improper or unclear instructions.
- 5.5. Delivery is deemed to take place when the Seller (or carrier) hands over to the Buyer a Delivery Note authorising the Buyer to receive and/or collect the Goods.

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- 5.6. The Seller reserves the right to make delivery of the Goods by instalments and to tender a separate invoice in respect of each instalment. In such event, each delivery shall constitute a separate Contract.
- 5.7. Any delivery dates given to the Buyer by the Seller (including in writing or within an Order) are approximate and time shall not be of the essence for delivery.
- 5.8. Late delivery of the Goods shall not entitle the Buyer to do any of the following:
- 5.8.1. reject the Goods;
 - 5.8.2. terminate the Contract; or
 - 5.8.3. withhold payment of any part of the price set out in the Contract or otherwise agreed between the parties.
- 5.9. The Seller reserves the right to deliver up to 10% (ten per cent) more or less than the quantity or weight (as applicable) of Goods ordered by the Buyer, and where there is a variance of quantity, the total price payable for the Goods will be amended pro rata.
- 5.10. If the Buyer fails to accept delivery of the Goods, or fails to give the Seller adequate delivery instructions, then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 5.10.1. store or arrange for the Goods to be stored until the Goods can be delivered to the Buyer, in which event the Buyer shall, upon receipt of Notice from the Seller, pay to the Seller the reasonable costs of storing the Goods, and insuring the Goods against loss or damage whilst the Goods are being so stored;
 - 5.10.2. re-sell the Goods to any other person at the best price readily available and (after deducting all reasonable storage, insurance and selling expenses incurred by the Seller) charge the Buyer for any shortfall below the price as set out in the Contract or as otherwise agreed between the parties; and/or
 - 5.10.3. invoice the Buyer for the Seller's cost of delivery and return of the Goods.
- 6. RISK AND OWNERSHIP**
- 6.1. Ownership of the Goods shall remain with the Seller and shall not pass to the Buyer until:
- 6.1.1. the Seller receives payment in cash or cleared funds in respect of all Goods ordered by the Buyer (including any interest, delivery and/or handling charges, insurance costs, fees or taxes), and until no other amounts are owed by the Buyer to the Seller; or
 - 6.1.2. the Buyer sells the Goods to another person, in which event ownership in the Goods shall pass to the Buyer immediately before the Goods are delivered to that other person.
- 6.2. Where the Goods are in the Buyer's possession or control, and are attached to or incorporated into other goods, (whether supplied by the Seller or by any other person) or are altered in any way, ownership in the Goods does not pass to the Buyer by virtue of that attachment, incorporation or alteration.
- 6.3. If the Buyer sells or agrees to sell any Goods to any other person:
- 6.3.1. where the Buyer has received the proceeds of such sale (the 'Proceeds'), the Buyer agrees to hold the Proceeds on trust for the Seller, and in a separate and identifiable bank or other account and the Seller may trace the Proceeds into any bank or other account which the Buyer maintains; and
 - 6.3.2. where the Buyer has not yet received the Proceeds, the Seller may, by serving a Notice on the Buyer, require the Buyer to assign to the Seller the Buyer's right to recover the price for any Goods which have been re-sold to any other person.
- 6.4. The Buyer irrevocably authorises the Seller, the Seller's officers, employees and agents to enter any premises controlled by the Buyer where the Goods are being stored, or are thought by the Seller to be stored for the purposes of:
- 6.4.1. satisfying the Seller that the Buyer's obligations under any part of these Conditions is being complied with;
 - 6.4.2. verifying the shelf-life and quality of the Goods being stored by the Buyer.
- 6.5. Risk in the Goods passes to the Buyer on delivery in accordance with clause 5.
- 6.6. If the Goods are destroyed by an insurable risk before the Buyer has paid for the Goods, the Buyer shall hold the proceeds of payment under the relevant insurance policy on trust for the Seller as payment for the Goods.
- 7. INSOLVENCY**
- 7.1. This clause will apply if the Buyer becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Buyer (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Buyer's assets or business, or if the Buyer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 7.2. If this clause applies then, without prejudice to other rights or remedies available to the Seller the relevant provisions of clause 6 will apply and:
- 7.2.1. the Seller shall be entitled to cancel or suspend any further deliveries under the terms of any Contract without incurring any liability for deliveries to the Buyer;
 - 7.2.2. all sums invoiced, and not paid in full shall become immediately payable notwithstanding any previous Contract or arrangement to the contrary between the parties.
- 8. WARRANTIES AND LIABILITY**
- 8.1. The Seller warrants that on delivery, the Goods shall:
- 8.1.1. conform in all material respects with their description and any applicable specification; and
 - 8.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 8.2. The Buyer shall, before signing and returning the Delivery Note to the carrier, carefully examine the Goods upon receipt and may reject them if it discovers, on reasonable examination, any defect or shortage.
- 8.3. If the Buyer accepts the Goods and on careful examination discovers a reasonably discoverable defect or shortage it must submit a Claim for any defects or shortages of the Goods by 17:00 on the Business Day after the date of delivery in accordance with clause 5.
- 8.4. Goods which are subject to a Claim in accordance with this clause shall be:
- 8.4.1. held in the Buyer's safe custody;
 - 8.4.2. returned to the Seller; or
 - 8.4.3. collected by the Seller;
- as directed by the Seller and at the Buyer's risk and expense. The Buyer shall give the Seller a right of access on any day between 08:00 and 18:00 to the place where the Goods are being kept so that the Seller can investigate the Buyer's Claim.
- 8.5. The Buyer shall not be entitled to make any deductions against the price of the Goods in respect of any Claim made unless:
- 8.5.1. the Seller has provided the Buyer with a Notice authorising such deduction to be made by the Buyer; and
 - 8.5.2. the Seller has been given a reasonable opportunity to investigate the Buyer's Claim.
- 8.6. The Seller is not obliged to process any Claim by the Seller which has not been made in accordance with this clause, in which event the Buyer may lose his entitlement to reject the Goods entirely, and may be obliged to make full payment of the price to the Seller.
- 8.7. Where the Goods have been used after the Buyer has become aware of a defect or shortage or in such circumstances which should reasonably have indicated to the Buyer that such a defect was present, the Seller shall not be liable for (and the Buyer shall indemnify the Seller in full for) any loss or damage the Seller or any other parties may sustain as a result of such defect in the Goods.
- 9. LIMITATION AND EXCLUSION OF LIABILITY**
- YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

Because the potential losses which the Buyer may suffer as a result of any breach of contract by the Seller are more readily ascertainable by the Buyer, and because any such losses could be disproportionate to the contract price, in order that the Seller can competitively price the Goods, the parties agree that the following limitations are put on the Seller's liability:
- 9.1. Where any valid Claim in respect of the Goods is based on any defect in the quality or condition of the Goods, or their failure to meet the specification as set out in the Contract, or as otherwise agreed between the parties, the Seller shall be entitled to replace any of the Goods at no extra cost to the Buyer or, at the Seller's sole discretion, to refund to the Buyer the price of the Goods (or the proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 9.2. Nothing in these Conditions shall limit or exclude the Seller's liability for any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability or:
- 9.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.2.2. fraud or fraudulent misrepresentation;
 - 9.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.2.4. defective products under the Consumer Protection Act 1987.
- 9.3. Subject to clause 9.2:
- 9.3.1. the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - (a) Consequential Loss; or
 - (b) any indirect loss arising under or in connection with the Contract;

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9.3.2. without the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the cost of the Goods.

9.4. The Buyer shall at all times use its best endeavours to mitigate any losses suffered as a result of any breach of the Contract by the Seller.

9.5. Subject as expressly provided in these Conditions, all warranties, conditions and other terms implied by statute or any other legally enforceable rule or Requirement is excluded to the fullest extent permitted by law.

10. UNFORESEEN CIRCUMSTANCES

The Seller shall not be liable for any failure to deliver the Goods arising from circumstances beyond the Seller's control including, but not limited to, vehicle failure, traffic, diversions, acts of God, war, riots, explosions, abnormal weather conditions, hurricanes, tornados, floods lightning strikes, storms, fires, government and/or industrial action, strikes, lockouts, delays due to suppliers, accidents, shortages of materials, mechanical and power failures, deficiencies in labour or any other manufacturing resources.

11. GOODS RECALL

In this clause 11, "Goods Recall" means the recall or withdrawal of Goods or products that incorporate the Goods howsoever caused which are in the control or possession of the Buyer.

11.1. In the event of a Goods Recall, and if the Seller requires, the Buyer will enforce procedures (as notified at the time) covering the Goods Recall, and will cooperate with the Seller to ensure that the Goods Recall is dealt with promptly and effectively.

11.2. To ensure the safety of customers and the general public, the Buyer will immediately report to the Seller any defect or possible defect in the Goods which could require a Goods Recall.

11.3. If the Buyer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market ("Recall Notice") the Buyer shall immediately send a Notice informing the Seller of the same, enclosing a copy of the Recall Notice.

11.4. Where Goods are to be recalled as a consequence of a Goods Recall the Buyer shall, at the instruction of the Seller;

11.4.1. return the Goods;

11.4.2. retain the Goods for inspection; or

11.4.3. destroy the recalled Goods (and provide proof of destruction).

11.5. Except to the extent required by law and as otherwise set out in these Conditions, the Seller shall not be liable for any further costs or charges as a consequence of the Goods Recall.

11.6. The Buyer may not publish any notices or press releases associated with a Goods Recall, without the prior written consent of an authorised representative of the Seller.

11.7. The Buyer shall maintain a proper and efficient procedure for reporting and dealing with complaints but shall not settle any complaint or otherwise compromise the Sellers position without prior written consent. Full details of all such complaints must be referred to the Seller by Notice upon receipt of the same. Notification must include the packaging and/or batch code of the relevant Goods, without which no complaint shall be considered.

12. TRADE/CREDIT REFERENCES AND DATA PROTECTION

The Seller reserves the right to seek trade and other references from time to time about the Buyer.

General Data Protection Regulations - The Seller provides a full Privacy Notice at www.mckelly.co.uk

13. NOTICES

13.1. Subject to clause 13.2 any Notice given to a party under or in connection with these Conditions must be in writing and must be delivered by hand, pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business.

13.2. In addition to the methods of delivery listed at clause 13.1 the Seller may give Notice under these Conditions by email to such email address as is specified from time to time by the Buyer. If no such address is specified then the Seller may use any email address which is customarily used to communicate with the Buyer or which the Buyer has provided to the Seller when opening their account with the Seller. For the avoidance of doubt, the Buyer may not give Notice by email.

13.3. A Notice shall be deemed to have been received:

13.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

13.3.2. if sent by pre-paid first-class post or other next working day delivery service, at midday on the second Business Day after posting or at the time recorded by the delivery service; or

13.3.3. if sent by email, at 9.00 am on the next Business Day after transmission.

13.4. Either party may inform the other of an address to which Notices may be delivered by notifying the other party in accordance with this clause 13.

13.5. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.

15. CANCELLATION

The Buyer shall not be entitled to cancel the Contract except with the consent of the Seller, to be given at the sole discretion of the Seller. Where the Seller consents to cancellation of the Contract they may stipulate a sum which must be paid by the Buyer to the Seller. That sum shall be no more than the price for the Goods (including VAT and other charges such as delivery), representing liquidated damages, to compensate the Seller for any loss incurred as a result of the cancellation.

16. SEVERABILITY

If any part of this Contract shall be held by any court of competent jurisdiction to be illegal or unenforceable, under any enactment or rule of law, such part shall be deemed severable and shall not form part of the Contract, but the validity and enforceability of the remainder of the Contract shall not be affected.

17. ASSIGNMENT

The Buyer must not under any circumstances assign to any other person any rights arising from that Contract without the prior written consent of the Seller.

18. JURISDICTION AND GOVERNING LAW

Any Contract and these Conditions, and any dispute or claim arising out of or in connection them shall be governed by and construed in accordance with English law and the Seller and Buyer agree to submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising under any Contract entered into under these Conditions.