

DATED

SOMERFIELD STORES LIMITED

And

CREDIT AGREEMENT

LAYTONS

Solicitors

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Lewins Mead

Bristol BS1 2NH

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Ref: AJP/2282553/21.08.06

THIS AGREEMENT is made the day of

BETWEEN:

- (1) **SOMERFIELD STORES LIMITED** whose registered office is at Somerfield House, Whitchurch Lane, Bristol, BS14 0TJ and whose company number is 623166 ("Somerfield"); and
- (2)**LIMITED** whose registered office is at
.....
and whose company number is
.....("the Purchaser")

WHEREAS:

- (A) Somerfield is engaged in food and non-food retailing from its stores throughout the United Kingdom
- (B) The Purchaser wishes to purchase certain goods from Somerfield and Somerfield has agreed to grant the Purchaser credit for such purposes on the terms and conditions set out in this Agreement

IT IS HEREBY AGREED as follows:

1. Definitions

1.1 The following expressions shall have the following meanings:-

- “Account”** means the credit account maintained by Somerfield for the Purchaser in connection with the Facility
- “Associated Company”** means any company which is in relation to another company its parent undertaking or its subsidiary undertaking or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control direct or indirect
- “Authorised Signatory”** means the individual named in the Schedule
- “Business Days”** means any and all days between Monday and Friday in any week but excluding English bank or public holidays
- “Card”** means any credit card (including any additional card) supplied by Somerfield from time to time under this Agreement

“Commencement Date”	means the date hereof
“Confidential Information”	means all information in respect of the business and financing of the Group (whether disclosed orally or in writing and whether or not such information is expressly stated to be confidential or marked as such) including without prejudice to the generality of the foregoing any ideas, business methods, finances, prices, product specifications, supplier lists, business, financial, marketing, development, manpower or new product development plans, customer lists or details, computer systems and software, know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by the Group and information concerning its relationships with actual or potential clients or customers and the needs and requirements of such persons
“Credit Limit”	means the maximum debit balance allowed on the Account as set out in the Schedule
“Facility”	means Somerfield’s retail sales credit scheme
“Group”	means Somerfield and each of its Associated Companies
“Period”	means any one of a series of consecutive periods of four (4) weeks (with one (1) period of five (5) weeks every six (6) years) which Somerfield shall operate as a financial and accounting period
“Purchases”	means all goods and services from time to time purchased or to be purchased by the Purchaser from Somerfield
“Statement”	means any statement of Account sent to the Purchaser in accordance with this Agreement
“Stores”	means the stores from time to time operated by or on behalf of Somerfield or its Associated Companies

“Week” means each period of seven (7) consecutive days commencing at 00.01 on a Sunday and finishing at 24.00 on a Saturday

1.2 In this Agreement:-

1.2.1 the masculine shall include the feminine and the neuter and the singular the plural and vice versa as the context shall admit or require;

1.2.2 the expression "person" shall mean any person, body corporate, unincorporated association and partnership;

1.2.3 the headings to the clauses of this Agreement are for ease of reference only and shall not affect the construction of this Agreement; and

1.2.4 any reference to a statutory provision shall include that provision as from time to time modified or re-enacted provided that in the case of modifications or re-enactments made after the date of this Agreement they shall not have effected a substantive change to that provision

1.3 The Schedule forms part of this Agreement

2. Commencement and duration

2.1 This Agreement will be deemed to have commenced on the Commencement Date and continue until terminated by either party pursuant to the terms of this Agreement

2.2 The Purchaser hereby irrevocably authorises Somerfield:-

2.2.1 to make such enquiries and obtain such information from third parties as Somerfield shall deem reasonably necessary to enable Somerfield to consider the Purchaser's application for credit pursuant to this Agreement; and

2.2.2 to disclose any information held by Somerfield in relation to the Purchaser or this Agreement to any credit reference agency or in response to any enquiry as to the credit worthiness of the Purchaser subject to the provisions of data protection legislation

3. Warranties

3.1 The Purchaser warrants and represents to Somerfield that:-

3.1.1 by entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it;

3.1.2 the Purchaser is duly incorporated and in good standing and has full power to enter into and perform and will perform its obligations under this Agreement;

3.1.3 all information given by or on behalf of the Purchaser to Somerfield in the course of the negotiations leading to this Agreement was and remains true and there is no

undisclosed fact or matter concerning the financial position or prospects of the Purchaser the disclosure of which might reasonably be or have been expected to affect the willingness of Somerfield to make the Account available to the Purchaser on the terms set out in this Agreement; and

3.1.4 it will promptly inform Somerfield of any adverse change in its financial position and of any change of address (temporary or permanent)

4. Issue of Card

4.1 As soon as is reasonably practicable after the date hereof, Somerfield shall issue the Card to the Purchaser

4.2 The Card is and shall at all times remain the property of Somerfield and must be promptly returned to Somerfield on request. The Card may be retained at any time by Somerfield or by any person acting on behalf of it

4.3 At any time during the continuance of this Agreement Somerfield shall be entitled to issue the Purchaser with renewed or new Cards

5. Use of Card

5.1 The Purchaser agrees to ensure that:-

5.1.1 the Card is used only by the Authorised Signatory;

5.1.2 the Card is used only to obtain Purchases from the Stores, and that the value of any one Purchase exceeds the minimum purchase value stated in the Schedule;

5.1.3 the Card is signed by the Authorised Signatory immediately upon receipt;

5.1.4 the Card is kept secure and safe at all times;

5.1.5 in using the Card the Credit Limit is not exceeded;

5.1.6 the Card is not used before or after the period (if any) for which it is stated to be valid, or after any notification of its cancellation or withdrawal is given by Somerfield or any person acting on its behalf

6. Lost or Stolen Card

6.1 If the Card is lost, stolen or is, for any other reason, liable to be misused, the Purchaser shall immediately notify Somerfield by contacting it on the following telephone number:-

(0117) 935 6331. This line is manned 24 hours.

The Purchaser and Somerfield shall agree the time of the telephone call and the Purchaser shall be issued with a log number relating to the call.

- 6.2 The Purchaser shall indemnify Somerfield against all claims and demands for any liability, loss, damage or expense of whatsoever nature which may be suffered by any person by reason of any misuse of the Card prior to Somerfield issuing the Purchaser with a log number pursuant to clause 6.1 PROVIDED THAT the Purchaser shall not be obliged to meet any claims under such indemnity to the extent that such claims arise as a result of a breach by Somerfield of any term of this Agreement
- 6.3 The Purchaser shall give to Somerfield, and to any person acting on its behalf, all assistance in investigating any loss, theft or possible misuse of the Card and all available information as to the circumstances of such loss, theft or possible misuse. The Purchaser will take all reasonable steps to assist Somerfield in recovering a lost or stolen Card
- 6.4 The Purchaser authorises Somerfield to disclose to third parties such information as is relevant concerning the Account in connection with any loss, theft or misuse of the Card

7. Account

- 7.1 Somerfield shall debit to the Account the amount of each transaction in respect of Purchases made with the use of the Card
- 7.2 In the event that Somerfield becomes liable to make any refund to the Purchaser, it shall credit the Account with the amount to be refunded upon production of a properly issued refund voucher, or other appropriate verification of refund, from the relevant Store
- 7.3 Somerfield may withdraw or vary the Credit Limit at any time by giving notice to that effect to the Purchaser, who may terminate this Agreement in accordance with clause 10.2 on receipt of such notice

8. Statements and Payment

- 8.1 On each Wednesday during the continuation of this Agreement Somerfield shall submit to the Purchaser an invoice in respect of Purchases debited to the Account during the preceding Week, such invoice to be payable in full within seven (7) days of its date (or such other period as may have been agreed between the parties in writing)
- 8.2 As soon as is reasonably practicable after the end of each Period Somerfield will prepare and deliver to the Purchaser a typed or printed Statement showing all debits and credits to the Account during the previous Period
- 8.3 All sums stated in this Agreement are exclusive of Value Added Tax which if applicable will be payable in addition at the rate and in the manner for the time being prescribed by law
- 8.4 All sums not paid by the Purchaser within the specified period for payment shall be subject to interest on the amount due computed from the date of the invoice on a day to day basis at the rate of 5% per annum above HSBC Bank plc's base rate ruling from time to time
- 8.5 Somerfield will be entitled to recover its expenses in connection with any default in payment by the Purchaser under this Agreement including legal expenses and costs of collection

8.6 Somerfield may require the Purchaser to make payments due under this Agreement by means of instruction to its bank to pay direct debits to the account of Somerfield and in such case the Purchaser shall keep such instruction in force and effective

9. Confidentiality

9.1 The Purchaser shall keep the Confidential Information in strict confidence and secrecy and shall not divulge such information to any person (except to its own employees and then only to those employees who need to know the same) without Somerfield's prior written consent

9.2 Clause 9.1 shall not extend to information which was rightfully in the possession of the Purchaser prior to the commencement of the negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause 9) or which is trivial or obvious

9.3 The obligation of confidentiality set out in this clause 9 shall survive any termination of this Agreement

10. Termination

10.1 Subject to clause 10.3, either party may terminate this Agreement at any time

- (a) by giving seven (7) days written notice to the other party of such termination; or
- (b) forthwith by giving written notice, if the other party is in material breach of any term of this Agreement

10.2 Subject to clause 10.3, the Purchaser may terminate this Agreement forthwith in writing in accordance with clauses 7.3, 12.2 and 18.2

10.3 Any notice given by the Purchaser pursuant to this clause 10 will only be effective once it has complied fully with its obligations under clause 11.2

11. Effects of Termination

11.1 The following provisions of this clause 11 shall apply in the event of the termination of this Agreement howsoever arising

11.2 The Purchaser shall forthwith:-

11.2.1 return each issued Card to Somerfield; and

11.2.2 repay the outstanding balance on the Account in full

11.3 Subject to clause 11.2, all rights and obligations under this Agreement will automatically terminate with the exception of:-

11.3.1 such rights of action as shall have accrued prior to the termination date (including but not limited to any and all claims for any breach of any term or undertaking contained in this Agreement); and

11.3.2 all obligations under this Agreement which are expressed to survive its termination and continue thereafter together with such clauses survival of which is implied or is necessary for the interpretation or enforcement of this Agreement

12. Assignment

12.1 The Purchaser acknowledges and agrees that Somerfield may assign its rights under clause 8 to a third party debt collection agency at its absolute discretion

12.2 Subject to clause 12.1, Somerfield shall be free to assign, transfer or otherwise deal with its rights under this agreement provided that the Purchaser may terminate this Agreement on receiving notice of such assignment, transfer or dealing in accordance with clause 10.2

12.3 Somerfield enters into this Agreement as trustee as well for itself as for every other of its Associated Companies to the intent that Somerfield and every other of its Associated Companies be entitled to enforce the obligations of the Purchaser under or arising under this Agreement

12.4 Except as provided in this clause 12, this Agreement is personal to the parties and neither of them may without the prior written consent of the other assign, mortgage, charge or dispose of any of its rights hereunder or sub-contract or otherwise delegate any of its obligations under this Agreement

13. Force Majeure

13.1 Somerfield shall not be liable in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to force majeure which expression for these purposes means any cause beyond the reasonable control of Somerfield and shall include governmental actions, war, riots, civil commotion, strikes, lock outs or other forms of industrial action, fire, flood, epidemic and Act of God

14. Successors

14.1 This Agreement shall be binding upon and shall enure to the benefit of each party's successors and assigns

15. Relationship of Parties

15.1 Each party is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee nor are the parties hereby engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other party nor to bind the other party by contract or otherwise unless expressly permitted by the terms of this Agreement

16. Severability

16.1 If any provision of this Agreement is held invalid illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement the parties shall immediately commence good faith negotiations to remedy such invalidity

17. Entire Agreement

17.1 This Agreement replaces and supersedes all existing agreement between the parties relating to the granting of credit by Somerfield to the Purchaser, but is without prejudice to any accrued rights either party may have under such agreements

17.2 This Agreement contains all the terms which the parties have agreed in relation to the transaction provided for by this Agreement and neither of the parties has been induced to enter into this Agreement by a statement or promise which this Agreement does not contain

18. Variation

18.1 This Agreement may be varied by Somerfield at any time by giving not less than fourteen (14) days notice of such variation (in writing signed by a duly authorised officer of Somerfield) to the Purchaser and such notice shall take effect from the date specified therein subject to clause 18.2

18.2 Within seven (7) days of service of a notice given by Somerfield under clause 18.1 the Purchaser may give written notice to Somerfield rejecting such variation, and such notice shall terminate this Agreement forthwith subject to clause 10 and clause 11

19. Waiver

19.1 Failure or delay by either of the parties in exercising any right or remedy of that party under this Agreement shall not in any circumstances operate as a waiver of it nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy

19.2 Any waiver of a breach or default under any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement

20. Notices

20.1 Any demand notice or communication under this Agreement shall be in writing to Somerfield at its registered office (fax number 0117 935 6455) addressed to the Company Secretary and to the Purchaser at its registered office (the fax number for which is set out in the Schedule) (or such address or fax number as may be notified in writing expressly for such purpose from time to time)

20.2 Any demand or communication shall be deemed to have been duly served:-

20.2.1 if delivered by hand when left at the proper address for service;

20.2.2 if sent by prepaid first class post forty eight (48) hours after being posted (excluding Saturdays Sundays and public holidays); or

20.2.3 if given by fax following transmission (confirmed by letter sent by post)

provided that where in the case of delivery by hand or transmission by fax such delivery or transmission occurs either after 5.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 10.00 am on the next following Business Day (such times being local time at the address of the recipient)

21. Announcements

21.1 No announcement, circular, advertisement or other publicity in connection with the subject matter of this Agreement shall be made or issued by or on behalf of the parties (save as required by law or the regulations of the London Stock Exchange Limited) without their prior written consent

22. Law and Jurisdiction

22.1 This Agreement shall be governed by English law and the parties shall be subject to the exclusive jurisdiction of the English courts

23. Third Party Rights

23.1 Subject to clause 12, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act

IN WITNESS this Agreement has been signed by the parties on the date first above written

SCHEDULE

Authorised Signatory:-

Credit Limit (£):- PER WEEK

Minimum Purchase Value (£):-

Purchaser's fax number:-

SIGNED by)
for and on behalf of)
SOMERFIELD STORES LIMITED)

SIGNED by)
for and on behalf of)
LIMITED)