

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. OVERRIDING PROVISIONS

- 1.1 The Company gives quotations and accepts orders on these Terms and Conditions which supersede any other terms appearing in the Company's documents or elsewhere (other than a Contract incorporating these Terms and Conditions) and override any other terms which the Buyer seeks to introduce in any way and any course of dealing established between the Company and the Buyer.
- 1.2 No Contract for the Company's sale of Goods to the Buyer will be effective unless these Terms and Conditions form part of it (subject to any changes to them in the Contract) and no modification of or addition to them will be effective unless made by a written agreement between the parties.
- 1.3 The Buyer acknowledges that there are no representations outside these Terms and Conditions which have induced entry into any Contract of which these Terms and Conditions form part.
- 1.4 Signature for the Company of any of the Buyer's documentation will not have any effect on these Terms and Conditions.
- 1.5 Reference in these Terms and Conditions to 'Goods' means any product specified in a Contract between the Company and the Buyer or in any related written order from the Buyer to the Company or quotation or sales confirmation from the Company to the Buyer.
- 1.6 Except in reference to section 20 in these Terms and Conditions to the 'Buyer' includes reference to its Employees Agents and Representatives

### 2. QUOTATIONS

Quotations are subject to withdrawal at any time before receipt of a written order from the Buyer and will be deemed to be withdrawn unless accepted within 30 days from the quotation.

A quotation is not a contractual offer by the Company but its receipt of a written order from the Buyer will constitute a contractual offer.

### **3. PRICE**

- 3.1 The price of the goods shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price set forth in the order confirmation or invoice issued the company.
- 3.2 All prices quoted are subject to change without notice.

### **4. DELIVERY**

- 4.1 Any delivery date which the Company indicates is an estimated date only and the Company will not be liable for any loss or damage occurring through any failure or inability to meet the date.
- 4.2 The Company will not be liable for any loss whether partial or general to the Buyer (consequential or otherwise) in respect of any shortage of, or failure to supply Goods where the shortage or failure is due to force majeure as defined in section 15.
- 4.3 Delivery to the Buyer's nominated delivery location will be, and the Company may deem delivery to a carrier to be, delivery to the Buyer.
- 4.4 The Buyer must check and sign any Delivery Documents which will then be proof of delivery of the Goods and issue and sign (if relevant) its own Proof of Delivery documents corresponding with the Delivery Documents which will then be proof of acceptance of all the Goods specified in them.
- 4.5 Any relevant supply or delivery conditions of the Company will apply and override these Terms and Conditions where there is a conflict.

### **5. CLAIMS FOR LOSS DAMAGE OR SHORTAGES**

- 5.1 The Buyer must notify the Company in writing of whole or partial non-delivery or shortages within three days after the indicated delivery date. If not the Goods will be conclusively deemed to have been delivered.
- 5.2 The Company will not be liable for any financial, economic or consequential loss (including loss of profits) resulting from the Company's performance of or failure to perform its obligations except further to section 5.3.
- 5.3 The Buyer must notify the Company in writing of:
  - 5.3.1 any condemnations (if there is recognised to be an inherent fault) or seizures for whatever reason and deliver full particulars to the Company within five days of the date of the condemnation or seizure supported by certificates signed by a recognised Public Health Official or Official of a recognised Regulatory Body giving full relevant details including any relevant time-limits or other conditions and the reason for any seizure.
  - 5.3.2 any claims about the condition, quality, quantity, specification or weight of the Goods within seven days from the date of delivery.

- 5.4** In the case of Goods delivered in sealed containers the Buyer must ensure that:
- 5.4.1** the containers and the seal numbers and quantities correspond with those shown on the Delivery Note.
  - 5.4.2** the seals are intact and that the Buyer notifies the Company without delay of any discrepancy or broken seal.
  - 5.4.3** local Customs and Excise Officials are present when action is taken.
- 5.5** If the Buyer alleges that Goods are substandard, the Buyer must give the Company a reasonable opportunity of inspecting the Goods and deciding an agreed course of action before the Buyer disposes of or surrenders them.
- 5.6** A Buyer's claim will not be valid if the Buyer does not comply with 5.5.
- 5.7** The Company's acceptance of notification of a claim is not an admission of liability.

## **6. TITLE AND RISK**

- 6.1** Property in all Goods remains vested in the Company and it will have a lien on them and related documents until the Buyer has made payment due to the Company under all Contracts between the Company and the Buyer in full but the risk of damage to or loss of all or any of the Goods will pass to the Buyer at the time of delivery.

The Company may take proceedings for recovery of the price of the Goods even if the property in them has not passed.

- 6.2** Until the Property in the Goods passes to the Buyer:
- 6.2.1** the Buyer must hold the Goods as the Company's fiduciary agent and bailee, and ensure that the Goods are identifiable from those of the Buyer and third parties and are properly stored, protected, insured and identified as the Company's property.
  - 6.2.2** the Company may require the Buyer to deliver the Goods to the Company and, if the Buyer fails to do so, immediately enter any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
  - 6.2.3** the Buyer may not pledge or in any way charge by way of security any of the Goods which remain the property of the Company.
- 6.3** If, despite of sub section 6.2.1 and 6.2.2, the Buyer sells the Goods or any part of them in the ordinary course of its business, the Buyer will transfer its rights to recover the selling price from the third party concerned to the Company, if it is still outstanding and immediately notify the third party.
- 6.4** If the price or any part of it is outstanding and the Company does not invoke section 7.4 the Company may dispose of Goods and related documents in its possession:
- 6.4.1** if the Goods are liable to perish or deteriorate at its discretion as soon as it has taken reasonable steps to bring its intentions to the Buyer's notice.

- 6.4.2** in any other case as the Buyer's agent seven days after giving written notice to the Buyer.
- 6.5** If 6.4 applies the Company will:
  - 6.5.1** apply the proceeds of a sale to reduce or pay off the outstanding amount.
  - 6.5.2** account to the Buyer for any balance remaining after deducting all costs, including legal fees, of and incidental to the sale or disposal.
  - 6.5.3** have no other liability to the Buyer for the disposal.
- 6.6** If the Buyer contravenes 6.2 or 6.3 all sums which the Buyer owes to the Company will become due and payable immediately and the Company's other rights and remedies will arise.

## **7. PAYMENT**

- 7.1** Invoices are due for payment by the due date as stated on the invoice or if no date provided, 30 days from the date of invoice.
- 7.2** Without prejudice to any other right or remedy the Company reserves the right to suspend the delivery of further supplies immediately if:
  - 7.2.1** the Buyer fails to settle any invoices under 7.1; or
  - 7.2.2** there is any outstanding liability owing to it by the Buyer; or
  - 7.2.3** in its opinion the Buyer will not be able to meet, or is unlikely to be able to meet, any existing or future commitments to the Company.
- 7.3** The Company reserves the right to charge interest at a rate 1% per calendar month, calculated monthly on sums unpaid after the due date of the relevant invoice:
  - 7.3.1** from the due date until payment;
  - 7.3.2** after as well as before the Company obtains judgment against the Buyer.
- 7.4** The Company may treat the Buyer's failure to pay any part of the price of the Goods on time as a repudiation of the whole Sale Contract and recover damages for the breach of Contract.
- 7.5** If (for whatever reason) the Buyer ceases to take supplies from the Company or the Company ceases to deliver supplies to the Buyer (for whatever reason) all sums invoiced in respect of Goods supplied will fall due for immediate payment.
- 7.6** If the Buyer is a member of a group of companies, the Buyer hereby acknowledges that in the event of the insolvency of the Buyer, or a dispute between the parties or in such other circumstances as the Company may determine, it is agreed that sums which may be owing to the Buyer may be set off in extinction or diminution of such other sums as may be due from the Buyer, or any member of the group, to the Company.

## **8. WARRANTY AND INDEMNITY**

**8.1** Unless specifically stated otherwise in the relevant Contract all Goods which the Company supplies to the Buyer will have been subjected to whatever checks a prudent trader in or manufacturer of the Goods would reasonably have carried out to comply with the requirements of Food Safety Act 1990 and all other relevant UK and EU legislation BUT this Warranty will not extend to the sale of the Goods under the Buyer's own labels or to the labelling of the Goods unless it conforms with the description or specification of the Goods.

**8.2** Subject to any Warranty imposed by statute, the Company does not warrant that any Goods supplied:

**8.2.1** may lawfully be supplied or offered for sale outside the UK; or

**8.2.2** are suitable for mixing, blending or compounding with other Goods unless before the Contract for Sale of the Goods the Buyer has made full disclosure of all material facts relating to the use to which the Goods are to be put and of any Particular standards, requirements or specifications to which those other Goods are expected to conform.

The Buyer will indemnify the Company against all claims and liability arising through the Buyer's failure to make such disclosure.

**8.3** The Buyer must not make any representations or warranties or give any guarantees to third parties about the Goods unless they are consistent with these Terms and Conditions.

**8.4** All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**8.5** If the Company is to manufacture Goods or apply any process to Goods in accordance with a specification submitted by the Buyer, the Buyer will indemnify the Company against loss, damages, costs and expenses claimed or awarded against or incurred by the Company in connection with, or which the Company pays or agrees to pay in settlement of, any claim for infringement of any industrial or intellectual property rights of any other person resulting from the Company's compliance with the Buyer's specification.

**8.6** The Company reserves the right to make any changes in the specification of Goods which do not materially affect the quality of the Goods and which are required to conform with any relevant UK and EU legislation or where the Goods are to be supplied to the Company's specification.

## **9. STORAGE TRANSPORTATION AND SHELF LIFE**

**9.1** The Buyer must observe (including before the property in the Goods passes) storage and transportation conditions suitable for the Goods and proper stock rotation in the case of all Goods and must not release Goods for sale or distribution where, because of their age or having regard to the time normally taken in the progress of Goods along the distribution chain, they could not reasonably be expected to reach the ultimate consumer in a fresh and wholesome state and before the end of their recommended shelf life.

- 9.2** The Buyer acts (including by omission) at its own risk on any advice or recommendation which the Company or its employees or agents gives to the Buyer as to the storage or use of the Goods which the Company does not confirm in writing.

The Company will not be liable in any way for any advice or recommendation which is not so confirmed.

**10. INTERFERENCE WITH MARKINGS**

The Buyer must not obscure, remove, conceal or otherwise interfere with any markings or other indication of source or origin on any Goods or their labelling or packaging.

**11. RECEIPTS**

Where a Buyer pays by cheque or trader's credit the Company will not issue a receipt unless the Buyer so requests.

**12. CONFIDENTIALITY**

Each Party will use its reasonable endeavours to keep confidential (and to ensure that its employees, agents, professional and other advisers keep confidential), any information which it may have or acquire in relation to the operations, contracts, commercial or financial arrangements but this obligation will not apply to any disclosures required by law or regulatory requirements or to information already in the public domain other than by breach by either Party of its obligations under the Contract.

**13. NOTICES**

**13.1** All notices must be in writing and sent by pre-paid recorded or registered post or by facsimile transmission to the addressee's address in the Contract.

**13.2** Notices will be deemed to have been served 2 days after posting or (if confirmation of successful transmission is obtained at the time) at the time of sending in the case of facsimile transmission.

**14. DISPUTE RESOLUTION**

**14.1** The Company and the Buyer will negotiate in good faith for 5 working days (from the date on which one Party notifies the other of a dispute) to try to resolve any dispute arising on or in connection with the Contract.

**14.2** If the Parties fail to resolve the dispute within that time either Party may refer it to an independent expert (acting as an expert and not an arbitrator) agreed between the Parties or, in default of agreement within 14 days, appointed at the request of either Party by the President for the time being of the Law Society of England and Wales whose decision will bind the Parties. His fees will be borne equally if he does not determine otherwise.

## **15. FORCE MAJEURE**

- 15.1** To the extent that execution by the Company of any Contract is rendered impossible because of force majeure (as defined in 15.2), the Company will notify the Buyer as soon as practicable.

To that extent the Company will be excused immediately from further performance of the Contract and (where applicable) prices will be adjusted appropriately.

The Buyer must reimburse to the Company any costs which the Company incurs in the performance of any Contract relating to the manufacture or labelling of Goods to the Buyer's specification if the Company cannot make use of or dispose of any ingredients, manufactured or partly manufactured goods, labels or packaging related to that Contract.

- 15.2** Force majeure is any cause affecting performance of the Contract rising from or attributable to acts or events or circumstances beyond the reasonable control of the Company and includes strikes, lock-outs, stoppages, restraint or withdrawal of labour or other industrial action or labour dispute, shortages of labour supplies or materials, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, drought, earthquake, subsidence, communicable diseases, epidemic or other natural physical disaster, legislation acts or restraints of government and any other acts, events or circumstances beyond the Company's reasonable control.

## **16. TERMINATION**

- 16.1** 'Insolvency' is if:

**16.1.1** any distress or execution is levied on the Buyer's property; or

**16.1.2** a Receiving Order is made against it; or

**16.1.3** it makes an arrangement or composition with its creditors; or

**16.1.4** it has an order made for the appointment of a receiver or liquidator; or

**16.1.5** it goes into liquidation (other than to reconstruct or amalgamate).

- 16.2** The Company may end the Contract:

**16.2.1** on the Buyer's insolvency;

**16.2.2** on giving one month's written notice (or on immediate written notice in the case of Contracts lasting less than one month);

**16.2.3** immediately on written notice if the Buyer commits a material breach of the Contract and fails to rectify it within 7 days of receipt of the notice;

**16.2.4** immediately on written notice if an event of force majeure as defined in 15 persists for 60 days and continues materially to affect the performance of the Contract;

- 16.2.5 the Buyer fails to settle an invoice within 28 days of the end of the period in 7.1;  
or
- 16.2.6 if there is a change of control (as defined in Income and Corporation Taxes Act 1988 s.416(2)) of the Buyer.

**16.3** On the Buyer's Insolvency the Company may:

- 16.3.1 (without prejudice to any other right or remedy) immediately cancel all current contracts with the Buyer; and
- 16.3.2 set off sums owing by the Buyer to the Company against (and so extinguish or reduce) sums owing by the Company or another member of the Group to the Buyer.

**16.4** If the Company ends the Contract under 16.2 the Buyer will remain liable to pay the Company for any Goods included in the Contract which have been manufactured or created before the date of termination and 16.3.2 will be deemed to apply.

**17. ASSIGNMENT**

Neither Party may transfer or sub-contract its rights and obligations under the Contract without the prior written consent of the other Party, which will not to be unreasonably withheld or delayed.

**18. WAIVER OR INDULGENCE**

Any indulgence which the Company grants to the Buyer or any waiver by the Company of its rights under these Terms and Conditions in respect of any particular breach or series of breaches will not be an agreement to grant the same indulgence or make the same waiver of the Company's rights in respect of any further breach.

**19. PROPER LAW**

The Contract will be governed by and interpreted under English Law, and the Buyer submits to the exclusive jurisdiction of the Courts in England and Wales but the Company may enforce the Contract in any Court of competent jurisdiction.

**20. THIRD PARTIES**

Only the Buyer has contractual rights against the Company under these Terms and Conditions or a Contract incorporating them.

**Signed**.....

**Company**.....

**Date**.....