

General Terms and Conditions of Sale and Delivery of Futura Foods

1 Definitions

- 1.1 **"Buyer"** means the person, firm or company who purchases Products from the Seller.
- 1.2 **"Conditions"** means the terms and conditions set out in this document, as amended from time to time in accordance with clause 2.5.
- 1.3 **"Contract"** means the contract between the Seller and the Buyer for the sale and purchase of Products in accordance with these Conditions.
- 1.4 **"Delivery Location"** means the location to which the Products are to be delivered, as set out in the Order or such other location as the parties may agree.
- 1.5 **"Force Majeure Event"** means an event or circumstance beyond a party's reasonable control including, without limitation, circumstances affecting the provision of all or any part of the Products by the Seller's usual source of supply or delivery or by the Seller's normal route or means of delivery.
- 1.6 **"Futura Foods Group"** means Futura Foods UK Limited (registered in England and Wales with company number 02819125), any subsidiary or any holding company from time to time of Futura Foods UK Limited, and any subsidiary or holding company from time to time of Futura Foods UK Limited's holding company. Each company in the Futura Foods Group is a "member of the Futura Foods Group".
- 1.7 **"Insolvency Event"** means any event whereby the Buyer compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur.
- 1.8 **"Order"** means the Buyer's order for the Products, as set out in the Buyer's written offer to purchase Products from the Seller.
- 1.9 **"Products"** means all those products and materials (or any part of them) which are the subject of the Order and which are to be supplied to the Buyer by the Seller under these Conditions.
- 1.10 **"Seller"** means the member of the Futura Foods Group that has been named as a party to the Contract.

2 Formation of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 No Order shall be deemed to be accepted by the Seller until a written confirmation of the Order is issued by the Seller or (if earlier) the Seller delivers the Products to the Buyer, at which point the Contract shall come into existence.

- 2.4 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in any document or correspondence provided to the Seller and the Buyer waives any right it might otherwise have to rely on any such terms.
- 2.5 No representative, agent or sales person has the Seller's authority to vary, amend or waive any of these Conditions on behalf of the Seller and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless accepted in writing by the Managing Director or Finance Director of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in these Conditions shall exclude or limit the Seller's liability for fraudulent misrepresentation.

3 Products

- 3.1 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures (including any allergen or nutritional information in respect of products) are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of any Contract nor have any contractual force.

4 Orders and Delivery

- 4.1 Orders are accepted by the Seller subject to the availability of Products for delivery.
- 4.2 Unless otherwise agreed:
- (a) where the Delivery Location is within the UK, the Seller will deliver the Products to the Delivery Location at its own cost by any method of transportation regarded as suitable by the Seller at its discretion; and
 - (b) where the Delivery Location is outside of the UK, the Seller will deliver the Products to the Delivery Location in accordance with the terms set out in the Contract (provided that where no such terms are set out in the Contract, the Seller will deliver the Products to the Delivery Locations in accordance with DAP Incoterms 2010 rules).
- 4.3 Although the Seller will use reasonable efforts to meet delivery dates, any dates quoted for delivery are approximate only and time for delivery shall not be of the essence. The Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.4 If the Seller fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. For the avoidance of doubt, the Seller shall not be deemed to have failed to deliver the Products where, in accordance with clause 4.7, it informs the Buyer at the time of delivery or otherwise that it is delivering the Products in instalments and delivers any subsequent instalments within a reasonable period. The Seller shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.5 Delivery is completed on the completion of unloading the Products at the Delivery Location.

- 4.6 The Buyer shall use all reasonable endeavours to ensure that a responsible person shall be at the Delivery Location to take delivery of the Products and to sign for them. If the Buyer refuses or fails to take delivery of the Products on the date of delivery, the Seller will be entitled at its discretion to store the Products at the risk of the Buyer and the Buyer shall, in addition to the price payable under clause 6, pay all costs and expenses of such storage and any additional costs of carriage incurred.
- 4.7 The Seller reserves the right to deliver in instalments at its discretion. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment. If a Product is available at the time that the Order is confirmed, but is no longer available at the time of delivery, the Seller will not deliver the relevant Product and will not charge the Buyer for such Product.
- 4.8 All Products must be inspected by the Buyer immediately on delivery. If any Products are damaged, lost or if there has been short delivery or over delivery, the Buyer must endorse the haulier's consignment note (CMR) accordingly, and submit a detailed written claim to the Seller within 7 days of delivery of the Products.

5 Risk and Title

- 5.1 Except as otherwise provided in these Conditions, the risk of loss or damage to the Products shall pass to the Buyer upon delivery of the Products in accordance with clause 4.5.
- 5.2 Title to Products delivered to the Buyer shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- (a) such Products; and
 - (b) all other sums which are or which become due to the Seller from the Buyer for sales of Products or on any account.
- 5.3 The Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products. However, if the Buyer resells the Products before that time:
- (a) it does so as principal and not as the Seller's agent; and
 - (b) title to the Products shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

6 Product Recall

- 6.1 If the Buyer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products (or products which incorporate the Products, where the recall relates directly to the Products) from the market ("**Recall Notice**") it shall immediately notify the Seller in writing enclosing a copy of the Recall Notice.
- 6.2 Unless required by law, the Buyer may not undertake any recall or withdrawal of any Products (or products which incorporate the Products, where the recall relates directly to the Products) without the written permission of the Seller and only then in strict compliance with the Seller's instructions as to the process of implementing the withdrawal.

7 Price

- 7.1 Unless otherwise stipulated in writing by the Seller, the price payable for the Products shall be the price set out in the confirmation of Order or, if no price is confirmed, the price as stated in the Seller's price list or quotation relating to the Products.
- 7.2 Unless otherwise agreed, the price is inclusive of packaging costs and the cost of delivery in accordance with clause 4.2 and exclusive of VAT, customs duties and all other taxes, duties and expenses in respect of the Products all of which shall be added to the price for the Buyer's account.

8 Payment

- 8.1 The Seller may invoice the Buyer for the Products on or at any time after the completion of delivery. Unless otherwise agreed in writing, the Buyer shall make payment for the Products in full, in clear funds and in pounds sterling within 28 days following the date of invoice. Time for payment is of the essence.
- 8.2 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 8.3 The Buyer shall not purport to set off or withhold any payment claimed or due to the Seller under this or any other contract.
- 8.4 If the Buyer fails to make any payment to the Seller when due or suffers an Insolvency Event, the Seller shall have the right, without prejudice to any other remedies to withhold delivery of any undelivered Products and stop any Products in transit.

9 Warranty

- 9.1 The Seller warrants that on delivery the Products will conform in all material respects with their description, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and will comply with all applicable UK legislation governing the sale of the Products. The Seller will, at its option, refund the purchase price of, or replace free of charge, any Products which its examination confirms are defective, provided that:
- (a) the Buyer makes a full inspection of the Products immediately upon delivery;
 - (b) the Buyer notifies the Seller at the time of delivery of any defects which it discovers (except in the case of a latent defect which would not be reasonably apparent on inspection, which must be notified to the Seller immediately on the Buyer becoming aware of it);
 - (c) the Buyer has stored the Products in a suitable environment and at the appropriate temperature; and
 - (d) the Products are either made available to the Seller for inspection or returned to the Seller at the Buyer's own expense, as the Seller may request.
- 9.2 Except as provided for in these Conditions, there are no warranties, express or implied, of fitness for a particular purpose, or of any other kind. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded to the fullest extent permitted by law.

10 Liability

- 10.1 The following provisions of this clause 9.2 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: (i) any breach of the terms of the Contract; (ii) any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Nothing in these Conditions shall limit or exclude the Seller's liability for: (i) death or personal injury resulting from the proven negligence of the Seller; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) defective Products under the Consumer Protection Act 1987.
- 10.3 Subject to clause 10.2:
- (a) 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 indirect, special or consequential loss (including loss of anticipated profit or third party claims) howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended use of the Products, even if the Seller has been advised of the possibility of such potential loss.
 - (b) 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 an amount equal to 125% of the price paid for the Products.

11 Termination

- 11.1 Should the Buyer make default in any payment or otherwise be in breach of its obligations to the Seller under the Contract or under any other contract with the Seller or suffer an Insolvency Event, the Seller may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith terminate the Contract, suspend or cancel any uncompleted part of the Contract or stop any Products in transit or require payment in advance or satisfactory security for further deliveries under the Contract.
- 11.2 On termination of the Contract for any reason, the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

12 Force majeure

- 12.1 The Seller shall not liable to the Buyer for any loss or damage caused to or suffered by the Buyer as a direct or indirect result of the supply of the Products by the Seller being prevented, restricted, hindered or delayed by a Force Majeure Event.

13 General

13.1 Interpretation.

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (c) a reference to **writing** or **written** includes emails.

13.2 **Assignment and other dealings.**

- (a) the Seller may at any time assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract;
- (b) the Buyer may not assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

13.3 **Notices.** Any notice given to a party under or in connection with the Contract will be in writing and will be delivered by hand or by pre-paid first-class post at the other party's address as detailed in the Order. Any notice will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; or
- (b) if sent by pre-paid first class post, at 9.00 am on the second business day after posting.

13.4 **Waiver.** The failure of the Seller to insist upon the strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such term and condition and shall in no way affect the Seller's right to enforce such provision later.

13.5 **Severability.** If any of the terms and conditions of the Contract (or part thereof) shall be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such term or condition (or part thereof) shall not affect any other term or condition (or the other part of the term or condition of which such invalid, ineffective or unenforceable part forms part) and all terms and conditions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

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

13.7 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

14 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.