



CONDITIONS OF SALE

1 DEFINITIONS

- 1.1 "and/or" shall mean either of the alternatives or both of the alternatives as the context requires;
- 1.2 "Buyer" means the person, firm or company named on the attached document issued by the Seller;
- 1.3 "Contract" means any contract between the Buyer and the Seller incorporating these conditions for the sale of goods;
- 1.4 "goods" means any goods ordered from the Seller by the Buyer or to be supplied by the Seller to the Buyer;
- 1.5 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including legal costs) and any other losses and/or liabilities; and
- 1.6 "Seller" means Community Foods Limited, Micross, Brent Terrace, London, NW2 1LT.

2 OTHER TERMS OR REPRESENTATIONS

- 2.1 All contracts between the Seller and the Buyer are subject to these conditions of sale.
- 2.2 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Buyer by the Seller.
- 2.3 The Seller shall not be bound by any variation, waiver or addition to these terms unless the same is agreed in writing by an authorised representative of the Seller.
- 2.4 These conditions shall supersede and override any conditions of purchase stipulated by the Buyer except and to the extent that any conditions of purchase are agreed in writing by an authorised representative of the Seller.

3 CONTRACT FORMATION

- 3.1 Quotations issued by the Seller shall be available for acceptance for a period of 1 day unless stated otherwise. Quotations may be withdrawn by the Seller at any time during this period by oral or written notice.
- 3.2 The Seller has the right to refuse any orders placed for goods at any time before the Seller accepts the order in writing.
- 3.3 The Buyer shall be responsible for the accuracy of any order placed and for providing the Seller with all such information as is necessary in order for the Seller to perform the Contract.
- 3.4 The Contract between the Seller and the Buyer shall come into effect on the Seller's written acceptance of the Buyer's order.
- 3.5 The Buyer shall not be entitled to cancel any order unless agreed in writing by the Seller.

4 DESCRIPTION AND QUALITY

- 4.1 Any specification supplied by the Seller to the Buyer shall only be approximate unless stated on the Seller's quotation or agreed in writing by the Seller.
- 4.2 Unless otherwise stated the quality of the goods at the time of despatch to the Buyer shall be equal to the fair and average quality of that particular year's crop.
- 4.3 Due to the nature of many of the goods sold by the Seller, no guarantee can be given that the goods will be 100% free from physical or microbiological contamination.
- 4.4 The Seller gives no condition or warranty as to the suitability of the goods for any particular purpose. It shall be the Buyer's responsibility to ensure that any goods contracted for or supplied are suitable for the purpose for which they are purchased, or to put them into such a condition as will render them suitable, for any particular purpose.
- 4.5 Due to the perishable nature of many of the goods sold, the Seller is unable to give any warranty as to the length of time for which goods will remain fit for consumption. It is the responsibility of the Buyer to ensure that such goods are fumigated as necessary and stored appropriately.
- 4.6 The Buyer shall accept the goods. If the goods supplied do not conform with their description or any sample or if they are not of merchantable quality then the Buyer shall accept the goods and the Seller shall either refund from the price paid or deduct from the price payable such proportion of the purchase price as represents the price paid for any such defective goods. The price allowance shall be the Buyer's sole remedy. The Buyer shall forfeit the right to claim such an allowance if the claim is not made within 4 days of delivery of any defective goods or if the Buyer fails to provide such information and documentation as the Seller requires from the Buyer to substantiate the Buyer's claim that the goods are defective.
- 4.7 If the Seller recalls any goods, the Buyer shall immediately cease to market and/or sell any goods recalled by the Seller and shall cooperate fully with the Seller including but not limited to by the provision of information to customers.
- 4.8 The Seller reserves the right to make changes to the specification of the goods as required from time to time by law, applicable safety requirements and/or manufacturing requirements provided that they do not have a material adverse effect on the acceptability of the goods.

5 ESTIMATION

- 5.1 A minimum order value of £600 excluding VAT shall apply on all collated orders.
- 5.2 The quantities of goods stated in the quotation are estimated.
- 5.3 The words 'about' or 'more or less' or similar words when applied to the Contract quantity mean that the Seller may satisfy any order for goods by delivery of a weight or number (as appropriate) of goods which is within 10% of the amount ordered and the price shall be adjusted pro rata as a result.

6 PRICE

- 6.1 The price of this Contract is based on current costings. The price of the goods shall be as quoted to the Buyer by the Seller or as otherwise shown in the Seller's price list current at the date of the acceptance of the order.
- 6.2 Except when stated otherwise, the price shall exclude delivery.
- 6.3 The Seller's prices are exclusive of any applicable VAT for which the Buyer shall additionally be liable.
- 6.4 The Seller may increase its prices in relation to the goods which the Seller has agreed to supply where the increase is to take account of increases in costs, expenses and/or materials suffered by the Seller including but not limited to any increases in freight costs, duties, levies, minimum import price, value added tax, insurance costs, transport costs, landing costs and/or warehousing costs.

7 PAYMENT

- 7.1 Unless otherwise agreed by an authorised representative of the Seller in writing, all invoices shall be paid within 30 days from their date of issue.

Time for payment shall be of the essence.

- 7.2 If the Buyer fails to make any payment in full on the due date the Seller may charge the Buyer interest (both before and after judgment) on the amount unpaid at the rate of 1% per annum above the Seller's bank's base lending rate from time to time for every day in respect of which payment is delayed
- 7.3 Any monies received by the Seller from the Buyer may be applied by the Seller at the Seller's option against any interest charged prior to application against any principal sums due from the Buyer against which it may be applied in any order.
- 7.4 The Seller shall be entitled to invoice each delivery of goods separately on the collection/despatch date agreed with the Buyer.
- 7.5 The Buyer shall pay all sums due to the Seller under this Contract without any set-off, deduction, counterclaim or any other withholding of monies.
- 7.6 If payment in full is not made to the Seller when due then the Seller may withhold or suspend future or current deliveries of the goods and delivery under any other agreement with the Buyer.
- 7.7 The Seller may charge the Buyer for cheques returned unpaid to the Seller at the rate of £25.00 per returned cheque plus 2% of the original cheque value.
- 7.8 The Seller may charge the Buyer for cheques which are represented by the Seller at the rate of £25.00 cheque plus 1% of the original cheque value.

8 RIGHTS TO TERMINATE OR DELAY

- 8.1 The Seller shall have the right at any time to demand from the Buyer payment of all overdue accounts, whether for goods supplied under this Contract or any other contract and in the event of the Buyer failing to comply with such demand within 7 days, the Seller may delay delivery until such overdue accounts are paid.
- 8.2 If the Buyer:
 - 8.2.1 fails to make any payment to the Seller when due;
 - 8.2.2 breaches the terms of this Contract and, if the breach is capable of remedy, has not remedied the breach within 7 days of receiving notice requiring the breach to be remedied;
 - 8.2.3 persistently breaches any one or more terms of this Contract;
 - 8.2.4 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances;
 - 8.2.5 appears to the Seller due to the Buyer's credit rating to be financially inadequate to meet the Buyer's obligations under the Contract; and/or
 - 8.2.6 appears reasonably to the Seller to be about to suffer any of the above events; then the Seller shall have the right, without prejudice to any other remedies, to terminate the contract forthwith (or upon such notice as the Seller thinks fit).

9 FORCE MAJEURE

- 9.1 The Seller shall have no Liability to the Buyer for any delay in performance of this Contract to the extent that such delay is due to any events outside the Seller's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, civil disturbances, malicious damage, explosion, governmental actions, accident, interruption of traffic or production, lack of shipping space, regulations and/or restrictions by any government and/or regulatory authority, alteration of regulations and/or restrictions by any government and/or regulatory authority, lack of import or export licences, or any other cause interfering with the manufacture or delivery of goods, and any other similar events. If the Seller is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

10 DELIVERY

- 10.1 Shipment and delivery dates are given in good faith, but are only estimates made by the Seller and are not guaranteed. Time is not of the essence in relation to such dates.
- 10.2 The Seller may, at its sole discretion, make delivery by instalments.
- 10.3 Where delivery is made by instalments each delivery shall be a separate Contract and failure by the Seller to deliver, or any claim made by the Buyer in respect of any instalment shall not entitle the Buyer to repudiate and/or terminate this Contract. The Seller shall be entitled to invoice the Buyer for each instalment separately.
- 10.4 The Buyer shall have no right to reject goods and shall have no right to rescind for late delivery unless the due date for delivery has passed and the Buyer have served on the Supplier a written notice requiring the Contract to be performed and giving the Seller not less than 14 days in which to do so and the notice has not been complied with.
- 10.5 The Seller shall not be required to fulfil orders for goods in the sequence in which they are placed.
- 10.6 The Buyer shall be responsible at its own cost for all arrangements to unload the goods when delivered to the Buyer. Delivery will be made between 9.00am and 5.30pm on working days unless otherwise agreed between the parties or the parties' authorised representatives.
- 10.7 The Buyer shall ensure during normal working hours that the Seller has free rights of access to the address for delivery for the purpose of delivering the goods.
- 10.8 If the Buyer refuses to take delivery of any goods then the Seller shall be entitled to withhold delivery of any other goods and to treat this Contract as repudiated by the Buyer.
- 10.9 If the parties agree that the goods are to be collected from the Seller's premises then the Buyer shall collect the goods within 3 working days of being notified that the goods are ready for collection. If the goods are not collected by the Buyer within the specified period the Seller may despatch the goods to the Buyer at the Buyer's expense and risk and/or store the goods at the Buyer's expense and risk until despatch and/or collection.

11 LOSS OR DAMAGE

- 11.1 It shall be the responsibility of the Buyer to notify the carrier, warehouse and Seller of any loss or damage to goods in writing within 2 days from the date of delivery, or if goods are sold ex store then within 2 days from the date of the delivery order.
- 11.2 The Seller shall have no Liability whether resulting directly or indirectly for any loss and/or damage to the goods if the Buyer fails to comply with Clause 11.1.

12 LIABILITY

- 12.1 The Seller shall have no Liability for defective goods where the defect has been caused or contributed to by the Buyer to the extent so contributed.

- 12.2 The Seller shall have no Liability to the Buyer if the price for the goods has not been paid in full by the due date for payment.
- 12.3 The Seller shall have no Liability to the Buyer for defective goods, goods not despatched or goods damaged or lost in transit unless the event is notified to the Seller within the appropriate time limit set out in this Contract.
- 12.4 The Seller shall have no Liability for any defect in the goods caused or contributed to as a result of the goods being used for display or demonstration purposes or being handled by the Buyer's customers.
- 12.5 The Seller shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Buyer's continued sale and/ use of defective good after a defect has become apparent or suspected or should reasonably have become apparent to the Buyer.
- 12.6 The Seller shall have no Liability to the Buyer for any:
- 12.6.1 expenses, loss of profits and/or damage to goodwill;
 - 12.6.2 pure economic and/or other similar losses;
 - 12.6.3 special damages;
 - 12.6.4 aggravated, punitive and/or exemplary damages;
 - 12.6.5 loss of communications;
 - 12.6.6 consequential losses and/or indirect losses; and/or
 - 12.6.7 business interruption, loss of business, loss of contracts, loss of opportunity and/or production.
- 12.7 The Buyer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer (including by maintaining an adequate stock of goods) including but not limited to any Liability arising from any recall of goods by the Seller.
- 12.8 The Seller's total Liability to the Buyer in relation to any claim or series of linked claims shall not exceed 150% of the amount paid by the Buyer to the Seller under this Contract but to the extent that any of the Seller's Liability to the Buyer would be met by any insurance of the Seller then the Seller's Liability shall be extended to the extent that such Liability is actually met by such insurance.
- 12.9 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 12.9.1 Liability in contract (including fundamental breach);
 - 12.9.2 Liability in tort (including negligence);
 - 12.9.3 Liability for breach of statutory duty; and
 - 12.9.4 Liability for breach of common law and/or under any other legal basis; except that Clause 12.8 above placing financial caps on the Seller's Liability shall apply once in respect of all of the said types of Liability.
- 12.10 Nothing in this Contract shall exclude or limit the Seller's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
- 12.11 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 12.12 The limitations in this Contract are necessary in order to allow the Seller to provide the goods at its current prices. If the Buyer requires greater protection then the Seller will agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the goods.

13 CONTAINERISATION

- 13.1 The Buyer shall indemnify and keep indemnified the Seller from all Liabilities and increased administration and professional and legal costs on a full indemnity basis suffered by the Seller (without set-off, counterclaim and/or reduction) and arising out of or in connection with any demurrage arising from any act and/or omission of the Buyer, the Buyer being unable to take delivery and/or arising from the detention of containers at the Buyer's premises or the premises of the Buyer's agents and/or contractors.
- 13.2 The Buyer shall ensure that the seal affixed to the container is affixed and intact at the time of delivery and when a seal is broken or missing at the time of delivery the Buyer shall ensure that this is noted on the carrier's receipt. In the absence of such notification the Seller shall have no Liability to the Buyer for any claim in relation to goods contained in containers with broken and/or missing seals.
- 13.3 The Buyer shall ensure that any deficiencies, shortages and/or damage is noted clearly on the carrier's receipt at the time the container is accepted and unloaded.
- 13.4 Any claim must be made in writing to the carrier and the Seller on the day of delivery.

14 PROPERTY AND RISK

- 14.1 Property in the goods shall remain with the Seller until the Buyer has made full payment for them and has paid all sums due in relation to any other agreement between the Buyer and the Seller.
- 14.2 Until property passes to the Buyer, the Buyer shall keep the goods separate from any goods belonging to the Buyer or any third party and readily identifiable as the property of the Seller.
- 14.3 Property in the goods shall not pass to the Buyer until the Buyer has discharged all outstanding liabilities to the Seller.
- 14.4 Until title in the goods has passed to the Buyer the Buyer shall keep the goods insured for the price at which the goods were sold to the Buyer against all normal risks and shall hold any proceeds of such policy of insurance in relation to the goods on trust for the Seller upon receipt of the same.
- 14.5 Until ownership of the goods passes to the Buyer the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or have been resold. If the Buyer fails to do so the Seller's employees and/or agents may enter upon any premises owned and/or occupied by the Buyer where the goods are situated and repossess the goods.
- 14.6 Despite the goods remaining the property of the Seller the Buyer may sell the goods in the ordinary course of its business at full market value for the account of the Seller. The Buyer shall receive the proceeds of sale thereof on trust for the Seller, shall keep such proceeds separate from other monies and shall not pay any such sums into any over drawn bank account.
- 14.7 Risk in the goods shall pass to the Buyer on delivery. Delivery shall be deemed to occur:
- 14.7.1 upon the Seller issuing a delivery order in favour of the Buyer;
 - 14.7.2 at the time when the goods arrive at the place of delivery if the Seller delivers the goods by the Seller's own transport or the Seller arranges transport; or
 - 14.7.3 when the goods leave the Seller's premises; or
 - 14.7.4 after the expiration of 3 working days after the Buyer has been notified of it, if the goods are available for collection from the Seller.

15 AGENTS

- 15.1 Where the Buyer is acting on behalf of a principal, whether disclosed or not, the Buyer shall be liable for the performance of the Contract by the principal.

16 GENERAL

- 16.1 No waiver by the Seller of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

- 16.2 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 16.3 The Buyer shall not assign its interest in the Contract (or any part) without the Seller's prior written consent.
- 16.4 None of the terms and conditions of this Contract shall be enforceable by any person who is not a party to it.
- 16.5 Any obligation to "ensure" shall be deemed to create a primary obligation and liability and not merely a guarantee or a secondary obligation and liability.

17 PROPER LAW

- 17.1 This Contract shall be governed by the laws of England and Wales.

18 DISPUTES

- 18.1 The parties agree to submit to the non-exclusive jurisdiction of the courts of England and Wales.