



**IDEAL FOODS LTD**  
**Terms and Conditions**  
**of Supply**

## Terms and Conditions of Supply<sup>i</sup>

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Products<sup>ii</sup> that we sell.

### 1. Definitions and interpretation

1.1 In these Terms:

“**Contract**” means a contract between the parties for the sale and supply of Products entered into in accordance with Clause [3];

“**Customer**” means the customer for the Products as specified in Ideal Foods “Confirmation of Sale”.

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Prices**” means the prices for the Products, as sent by the Supplier to the Customer.

“**Products**” means the products which may be or are purchased by the Customer from the Supplier under these Terms (as per “Confirmation of Sale”)

“**Supplier**” means *Ideal Foods Ltd*, a limited company incorporated in England and Wales, registration number 4173954 having its registered office at The Courtyard, Trewolland, Liskeard, Cornwall, PL14 3NL, England.

“**Terms**” means these terms and conditions of supply.

1.2 The ejusdem generis rule is not intended to be used in the interpretation of these Terms; it follows that a general concept or category utilised in these Terms will not be limited by any specific examples or instances utilised in relation to such a concept or category.<sup>iii</sup>

### 2. These Terms

These Terms and Confirmation of Sale contain the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions.

### 3. Contracts<sup>iv</sup>

[3.1 Each order for Products given by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase Products from the Supplier subject to these Terms.

3.2 In order for a Contract to come into force:

(a) the Customer must submit an order to the Supplier and must give to the Supplier its express written acceptance of these Terms; and

(b) the Supplier must send to the Customer an order confirmation;

and upon the issue of an order confirmation by the Supplier a Contract will come into force between the parties.

## **4. Delivery<sup>1</sup>**

4.1 Unless otherwise agreed in writing:

- (a) all Products will be delivered by the Supplier to the Customer's premises
- (b) the Supplier will be responsible for arranging loading, carriage, transport, unloading and insurance for the Products
- (c) the Supplier will be responsible for paying all costs relating to loading, carriage, transport, unloading and insurance of the Products; and
- (d) risk in the Products will pass from the Supplier to the Customer when the Products are delivered to the Customer.

4.2 If the parties agree that [delivery / collection] of the Products under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.

4.3 Any date or dates for [the delivery / the making available for collection] of the Products agreed by the parties as part of a Contract will not be of the essence of the Contract.

## **5. Title**

5.1 Legal and equitable title to the Products will pass from the Supplier to the Customer upon the later of:

- (a) [delivery / collection] of the Products; and
- (b) receipt by the Supplier of all amounts due from the Customer to the Supplier [under the relevant Contract / under any Contract [or other agreement]].

5.2 Until title to the Products has passed to the Customer:

- (a) the Customer will hold the Products as fiduciary agent and bailee of the Supplier;
- (b) the Customer will: (i) store the Products in a secure, safe, dry and clean environment separately from other products and goods; (ii) ensure that the Products are easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Products or their packaging; (iv) ensure that no charge, lien or other encumbrance is created over the Products; and (v) deliver up the Products to the Supplier upon demand.

5.3 The Supplier shall be entitled without further notice to inspect or recover possession of any Products to which it retains title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Products are or may be situated for the purpose of inspecting or removing any such Products the title in which has remained with the Supplier.

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5.4 The Supplier may bring an action for the Prices of Products, and any other amounts due under a Contract, notwithstanding that title to the Products has not passed to Customer.

## **6. Customers obligations<sup>v</sup>**

[6.1 The Customer will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:

- (a) on behalf of the Supplier; or
- (b) in relation to the Products (other than those set out in a Contract in relation to the Products or otherwise mandatory under applicable law).]

[6.2 Without prejudice to the Supplier's obligations under Clause [8], the Customer must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:

- (a) the marketing, promotion and advertising of the Products; and
- (b) import, export, distribution, sale, supply and delivery of the Products.]

## **7. Prices and payment**

7.1 The Supplier may issue an invoice for the Prices under a Contract to the Customer at any time after [the Contract has come into force / the Products have been despatched to the Customer / the Products have been made available for collection by the Customer.

7.2 The Customer will pay the Prices to the Supplier within [30] days of the date of issue of an invoice issued in accordance with Clause [7.1].

7.3 All amounts payable under a Contract are exclusive of all value-added and other taxes and duties which will be payable by the Customer, where applicable or unless otherwise agreed.

7.4 If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract, the Supplier may:

- (a) charge the Customer interest on the overdue amount at the rate of [8]% per year above the base rate of [HSBC Bank Plc] from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Warranties<sup>vi</sup>**

8.1 The Supplier warrants that:

- (a) the Supplier has (or will have at the relevant time) the right to sell the Products;<sup>2</sup>
  - (b) the Products are free from any charge or encumbrance, subject to Clause [5] [and subject to any other charge or encumbrance disclosed or known
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to the Customer before the relevant Contract is made];<sup>vii</sup>

- (c) the Customer shall enjoy quiet possession of the Products, subject to the rights referred to in Clause [8.1(b)];<sup>viii</sup>
- (d) the Products correspond to any description of the Products supplied by the Supplier to the Customer;<sup>ix</sup>
- (e) the Products are of satisfactory quality;<sup>x</sup>
- (f) the Products are fit for any purpose expressly [or impliedly] [(but not merely impliedly)] made known by the Customer to the Supplier before the relevant Contract is made;<sup>xi</sup>
- (g) the Products correspond to any sample of the Products supplied by the Supplier to the Customer, and will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample;<sup>xii</sup>
- (h) the Products will comply with all laws, rules, regulations applicable to the marketing and sale of the Products in the United Kingdom [and all standards agreed between the parties]; and<sup>xiii</sup>
- (i) the Products will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause [8.1(h)].<sup>xiv</sup>

8.2 All of the parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Subject to Clause [10.1] and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related contract.

## **9. Complaints, credits and replacements<sup>xv</sup>**

9.1 The Supplier will promptly and in any event within [7] Business Days, fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Products.

9.2 If Products do not comply with any warranty given by the Supplier under a Contract, the Customer must advise the supplier within 7 days from receipt of goods and may with the prior agreement of the Supplier return those Products for either (at the option of the Supplier):

- (a) a full credit of the price paid to the Supplier for such Products [(excluding original delivery and related charges)];
- (b) replacement Products; or
- (c) a credit note in respect of the Price of the Products (to be offset against future purchases from the Supplier).

9.3 Products returned under Clause [9.2] must be properly packed and returned to [an agreed *address*] within [30] Business Days of receipt of the Products by the Customer. Any Products returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Products.

## 10. Limitations and exclusions of liability<sup>xvi</sup>

10.1 Nothing in the Contract will:<sup>xvii</sup>

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit or exclude any liability of a party under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (d) limit any liability of a party in any way that is not permitted under applicable law; or
- (e) exclude any liability of a party that may not be excluded under applicable law.<sup>xviii</sup>

10.2 The limitations and exclusions of liability set out in this Clause [10] [and elsewhere in the Contract]:

- (a) are subject to Clause [10.1];
- (b) govern all liabilities arising under the Contract or in relation to the subject matter of the Contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- [(c) will [not limit or exclude / limit and exclude] the liability of the parties under the express indemnities set out the Contract.]

10.3 The Supplier will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.<sup>xix</sup>

10.4 The Supplier will not be liable for any loss of business, contracts or commercial opportunities.

10.5 The Supplier will not be liable for any loss of or damage to goodwill or reputation.

10.6 The Supplier will not be liable in respect of any loss or corruption of any data, database or software.

10.7 The Supplier will not be liable in respect of any special, indirect or consequential loss or damage.<sup>3</sup>

10.8 The Supplier will not be liable for any losses arising out of a Force Majeure Event.

10.9 The Supplier's aggregate liability under the Contract will not exceed the greater of:

- (a) [*amount*]; and
- (b) the total amount paid or (if greater) payable by the Customer to the Supplier under the Contract.

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## **11. Contract term and termination**

11.1 Each Contract will come into force in accordance with Clause [3], and will continue in force until the earlier of:

- (a) the later of completion of: (i) [delivery / collection] of all Products; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
- (b) the termination of the Contract in accordance with the provisions of this Clause.

11.2 A Contract may be terminated in the following circumstances:

- (a) either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract;
- (b) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under [the / any] Contract by the due date for payment; [and
- (c) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to [accept delivery of the Products / collect the Products] on the date agreed in the relevant Contract.]

11.3 Either party may terminate any Contract immediately by giving written notice to the other party if:

- (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

## **12. Effects of termination**

12.1 Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 5, 6, 7.4, 9, 10, 12 and 13].

12.2 Termination of a Contract will not affect either party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.

### **13. General**

- 13.1 No breach of any provision of a Contract will be waived except with the express written consent of the party not in breach.
- 13.2 If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 13.3 Contracts may not be varied except by a written document signed by or on behalf of each of the parties.<sup>xx</sup>
- 13.4 The Supplier may freely assign its rights and obligations under a Contract without the Customer's consent. Save as expressly provided in this Clause or elsewhere in a Contract, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
- 13.5 Each Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.<sup>xxi</sup>
- 13.6 Subject to Clause [10.1]:
- (a) these Terms and Order Confirmation will constitute the entire agreement between the parties in relation to the subject matter of the Contract, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract; and
  - (c) neither party will have any liability other than pursuant to the express terms of a Contract.
- 13.7 Contracts will be governed by and construed in accordance with the laws of [England and Wales];<sup>xxii</sup> and the courts of [England]<sup>xxiii</sup> will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract.
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