

Terms and Conditions of Sale (copies are available upon request)

1. Definition

All references herein: -

- a) to 'Seller' are to Orchard Valley Foods Limited, or trading styles thereof.
- b) To 'Buyer' are to the person, firm or company or corporation by whom the order is placed.
- c) To 'Goods and Services' are to all or any part of the materials and services provided by the Seller under the contract.
- d) To 'In Writing' includes communication by letter, facsimile, copy or other written, printed or electronic means in legible form.

2. General

- a) A binding contract shall be created only when Seller has accepted an order by Buyer
- b) These conditions of sale shall apply to all orders and contracts for the sale of goods and services accepted by the seller, and shall override terms which may be inconsistent with the conditions of sale in the Buyers order form or other statement issued by the supplier.
- c) No variation of or addition to these conditions of sale shall be effective unless in writing and signed for by the Seller.

3. Separability

Each delivery or part delivery under this contract is to be considered a separate contract and failure on behalf of the Seller to make any delivery or part delivery shall not affect or vitiate this contract as to other deliveries.

4. Payment

- a) Unless agreed by the parties in writing, payment for each delivery shall be received by the thirtieth day from the date of the Sellers invoice and shall be made in the currency specified in the Sellers invoice provided that the Seller may at its discretion require the Buyer to pay the price and other charges in full before delivery.
- b) Failure to pay on the due date shall entitle the Seller without prejudice to its rights and remedies, to withhold or cancel subsequent deliveries and to charge the Buyer interest only on overdue accounts at the rate of 0.1% per day from the date due until the date cleared funds are received by the Seller.

5. Price

- a) Unless otherwise agreed by the parties in writing, prices quoted from Seller to Buyer are inclusive of loading, freight, carriage, insurance which will be arranged by the Seller.
- b) The price or the goods does not make any provision for any duty or tax (including VAT) present or future levied in the UK or other territory of destination in respect of the sale of the Goods. If Seller is liable for any such duty or tax, the amount thereof is additional to the price and is payable by Buyer to Seller.

6. Conditions, Warranties and Indemnity

- a) Seller warrants that the goods shall comply with the specification or description referred to in this contract or sample supplied by Seller and approved by Buyer. All otherwise express and implied conditions or warranties, statutory or otherwise, as to quality for fitness and purpose of Good or as to any ancillary service provided by seller are hereby excluded to the full extent permitted by law.
- b) Where the Goods supplied by Seller comply with the Sellers standard specification for such goods and / or specification requested by the Buyer. Buyer shall indemnify Seller fully from and against all costs, expenses and damage arising out of claims made against Seller arising out of any legislation implementing the EC directive on Product Liability (85/374/EEC) in relation to the Goods or other goods in which the Goods are processed, mixed or incorporated.

7. Exclusion of Liability

- a) Any liability of Seller under this contract for loss of profit or any indirect special or sequential loss or damage is hereby excluded to the full extent permitted by law.
- b) Without prejudice to any other provisions of this contract, all liability of seller in respect of contract or any other liability of Seller (including misrepresentation and negligence) for any loss, damage, injury arising in connection with the Goods, their delivery and / or any ancillary advice or ancillary services provided by Seller in relation to storing, applying or using the Goods is hereby excluded to the full extent permitted by law.

8. Patent Rights

If the Buyer uses or sells the Goods in such a manner as to infringe any patent rights, Seller shall not be responsible for such infringement nor for any alleged infringement arising from Buyers action in relation to the Goods and Buyer hereby agrees to indemnify Seller from and against all liability arising therefrom.

9. Non-payment, Bankruptcy and Liquidation

If Buyer

- a) fails to pay the sum due under this contract with Seller or
- b) becomes bankrupt or commits any act of bankruptcy or if
 - i) a petition is presented, an order made or a resolution passed for Buyers liquidation (other than liquidation only for the purpose of amalgamation or reconstruction without insolvency)
 - ii) a petition is presented for an administration order in relation to Buyer or
 - iii) Buyer shall enter into any arrangement or composition with creditors or
 - iv) A receiver or manager is appointed of Buyers assets or undertaking to any part thereof, Seller may at its option and without prejudice to any other rights or remedies which may have accrued to the Seller at such time cancel this contract and refuse to make further deliveries.

10. Delivery and Force Majeure

- a) Seller shall endeavour to meet any date given by Seller for delivery or despatch but any date is approximate only and shall not form part of this contract.
- b) Unless otherwise agreed by the parties in writing, delivery of the Goods shall in the case of sales to Buyer in the UK take place at the premises of Buyer agreed by Seller and in case of exports shall take place CIF at the port of discharge nominated by Buyer and agreed by Seller.
- c) Either party shall be liable to the other if the performance of its obligations under this contract is prevented, hindered or delayed directly or indirectly by reason of any circumstances beyond such parties reasonable control whether or not such circumstances exist at the date of order. Seller may, without prejudice to its rights or other remedies, totally or partly cancel, suspend or delay deliveries during any such period in which it may be so prevented, hindered or delayed and in such case Buyer may purchase elsewhere at its own cost and risk such quantities of the Goods as Seller be unable to deliver.

11. Notification of Failure or Delivery

- a) In the case of sales in the UK, the Buyer shall notify Seller in writing within 7 days of delivery in the event of shortage in delivery or partial loss or damage to the Goods in transit or within 21 days of date of invoice in the event of a non-delivery of the whole or any separate part of a consignment.
- b) In the case of export sales, Buyer shall immediately notify Seller in writing or (if appropriate) the carrier and where relevant the appropriate agent of the Sellers insurers in the event of loss or damage to the Goods in transit or non delivery of whole or any part of a consignment.
- c) Failure to notify in accordance with sub-paragraph a) or b) above shall preclude Buyer to any remedy in respect of the shortage, loss damage or non-delivery in question.

12. Passing of Risk and Property

- a) The risk in the Goods and packages shall pass to Buyer at the point of delivery stated in this contract. When packages and / or pallets are returnable to Seller, risk therein shall, unless otherwise specified revert to Seller when the same are removed from Buyers premises by Seller or sellers agent.
- b) Property in the Goods shall remain in Seller until the first to occur of:
 - i) payment being made by Buyer of all monies owed by it to Seller under this contract or any other contract or
 - ii) Buyer in the ordinary course of its business selling the Goods or processing the Goods with or incorporating the Goods in other goods or materials.
- c) Until property passes to Buyer
 - i) Buyer shall hold goods as fiduciary agent and bailee for Seller and will keep the Goods in such a way as to be clearly indefinable as being the property of Seller.
 - ii) Immediately in the event of a) any circumstances described in paragraph 9(b) above or b) of Seller serving notice on Buyer where Buyer is in default in the payment of any sum due under this contract or any other contract with Seller or where seller has reasonable doubts as to the solvency of Buyer.
 - (aa) Buyer shall thereafter make no sale, disposal or use of the Goods to which the Seller has retained title and shall make available for collection by Seller and
 - (bb) Seller shall be entitled to enter upon any premises of Buyer to remove such Goods and Buyer will allow Seller all necessary access for such purpose.
- d) No defect or invalidity affecting any of the above sub paragraphs shall affect the validity of any sub paragraph of this paragraph 12.

13. Packages, pallets and Containers

- a) Packages, pallets and containers supplier by Seller either
 - i) shall not be returnable to Seller and shall thereafter be charged full in the price, in which case Seller may at its discretion be prepared to buy back such packages, pallets and containers as are in good condition or
 - ii) shall remain the property of Seller, must be returned by Buyer to the supplying depot within three calendar months from the date of invoice and, if any such package, pallet or container is not returned in good order and condition within such period, it shall be invoiced to Buyer by Sellers standard rate then current or
 - iii) shall be returnable to Seller and shall be charged in full in the price, but credit may be allowed by Seller if they are returned in good condition, carriage paid to Seller or its agents three calendar months from date of invoice or such period as may be agreed
- b) Seller will specify to Buyer which of the above sub-paragraphs a), i), ii), iii) should apply to the relevant packages, pallets and / or containers supplied.

14. Interpretation of Export terms

Trade terms shall be interpreted in accordance with Incoterms 2000 or any subsequent edition thereof current on the date of this contract.

15. Quantities

Except in export contracts when letters of credit are used or when import licences are applicable in the territory of destination, Seller may deliver against order hereunder up to 5% in excess or deficiency of the amount specified for the delivery in question in full discharge of its obligation in this respect provided that as regards such excess or deficiency Seller shall make corresponding adjustments to the amount payable to Buyer.

16. Health and Safety

- a) It is the Buyers responsibility to ensure that applicable health and safety measures are observed and other appropriate steps taken in relation to storage, handling and use of the Goods and where the Buyer is supplied with a data sheet(s) and or leaflet(s) containing information on the potential hazards relating to the Goods to bring such information to the attention of its employees, agents, sub-contractors, visitors and customers. Buyer agrees to indemnify Seller fully from and against all costs, expenses, loss and damages arising out of claims made by employees, agents, sub-contractors, visitors and customers of Buyer in relation to any hazards or other matter referred to in any data sheet(s) or leaflet(s) supplied.
- b) Without prejudice to sub-paragraph a) it is Buyers responsibility to provide safe facilities for the reception of the Goods into storage and Buyer warrants that it will comply with the requirement of all competent authorities relating to the storage of the Goods and undertakes to observe relevant obligations under any statutory provision or government regulation for the time being in force.

17. Assignment

This contract is not assignable by either party except with the written consent of the other except where Orchard Valley Foods might assign the financial benefit of this contract.

18. Waiver

Waiver of any or all of these conditions shall not prejudice or affect the Sellers rights and remedies in respect of any subsequent breach, non-performance or non-observance by Buyer of the condition of this contract

19. Choice of Law and Arbitration

This contract shall be governed by English law and any dispute arising hereunder shall be settled by arbitration in England as provided by the arbitration act 1950, or any statutory modifications or re-enactments thereof from time to time in force.