

TOWN & COUNTRY FINE FOODS LTD

TERMS & CONDITIONS

1. INTERPRETATION

1.1 Definitions

'Buyer' means the person who buys or agrees to buy the Goods from the Seller.

'Business Day' means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.

'Contract' means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions

'Force Majeure Event' has the meaning given in Condition 12 of these Conditions

'Goods' means the articles (or any part of them) that the Buyer agrees to buy from the Seller as set out in the Order.

'Order' means acceptance of the Buyer's order by the Seller as confirmed by the Seller, either:

- (a) in writing; or
- (b) communicated orally over the telephone as supported by the subsequent issue and delivery of an invoice to the Buyer; or
- (c) on delivery of the Goods to the Buyer; or
- (d) on collection by the Buyer from the Seller.

'Price' means the price for the Goods as set out in the Order or, in the absence of a stated price, as per the Seller's prevailing price list and, in any event, including carriage and insurance but excluding VAT.

'Seller' means Town & Country Fine Foods Ltd (company number: 01821934) whose registered office is at Unit 4 Perth Trading Estate Montrose Avenue Slough Berkshire SL1 4XX

'VAT' means ad valorem duty at the rate ruling on the date of the Seller's invoice.

1.2 Construction.

In these Conditions, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) 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.
- (d) 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.
- (e) A reference to **writing** or **written** includes faxes and e-mails and any other electronic communication.

2. BASIS 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 including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- 2.3 The Contract constitutes the entire agreement between the parties. 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.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 A quotation for the Goods given by the Seller shall not constitute an offer.

3. THE PRICE AND PAYMENT

- 3.1 The Price shall be set out in the Order or in the absence of which shall be at the Seller's prevailing price list as at the date of the Contract. The prevailing price list shall be made available to the Buyer upon request.
- 3.2 The Price of the Goods is exclusive VAT (but includes the costs of insurance and transport of the Goods), which shall be invoiced to the Buyer.
- 3.3 For Buyers to whom credit facilities have been offered by the Seller, payment of the Price and VAT shall be due within 28 days of the date of the Seller's invoice. Time for payment shall be of the essence.
- 3.4 For Buyers to whom credit facilities have not been offered by the Seller, payment of the Price and VAT shall be due on or before delivery of the goods.
- 3.5 The Seller reserves the right to revoke credit facilities and suspend supplies as a result of a breach of Conditions 3.3 or if the set credit limit is reached under Condition 3.3.

- 3.6 Interest on overdue invoices, administration costs and charges shall accrue on the unpaid amount from the date when payment becomes due from day to day until the date of payment and shall accrue after as well as before any judgment. Interest shall be calculated in accordance with the "Late Payment of Commercial Debts (Interest) Act 1998" as amended and supplemented. Payment shall be made by the Buyer without any set-off, deduction or retention of whatsoever nature or howsoever arising.

- 3.7 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

4. THE GOODS

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's acceptance of the Buyer's order.
- 4.2 It is the Buyer's responsibility to ensure that the quantities are correct and that the Goods meet the Buyer's proposed specification.
- 4.3 The Seller shall not be liable for any incorrect or misleading information provided by the Buyer and the Buyer shall have no claim whatsoever against the Seller in respect of any Goods not meeting the Buyer's requirements or intended use in those circumstances.

5. WARRANTIES AND LIABILITY

The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded to the extent permitted in law.

6. DELIVERY OF THE GOODS

- 6.1 Unless otherwise agreed in writing by the parties, the Seller will deliver the Goods to the Buyer's address ("Delivery Location") as set out in the Order. The Buyer shall make all arrangements necessary to take delivery of the Goods at any time after the Seller notifies the Buyer that the Goods are ready, or are tendered, for delivery or collection, as the case may be.
- 6.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 6.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location for off-loading or, if to be collected by the Buyer from the Seller's premises, at the time and date as notified by the Seller to the Buyer that the Goods are ready for collection.
- 6.4 If the Seller fails to deliver the Goods, 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 Goods. The Seller shall have no liability for any failure to deliver the Goods 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 Goods.
- 6.5 If the Buyer fails to take or accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready.
- 6.6 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.7 The Seller reserves the right to apply a handling fee for any returned goods.

7. ACCEPTANCE OF THE GOODS

- 7.1 The Buyer shall be deemed to have accepted the Goods 24 hours after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject any Goods that are not in accordance with the Contract

8. TITLE AND RISK

- 8.1 Title to the Goods shall remain with the Seller until such time as full payment is received.
- 8.2 Until title to the Goods passes to the Buyer, the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller and shall not part nor deal with any of the Goods and shall keep them separately from the Buyer's own or other goods and clearly marked as belonging to the Seller. In the event that the Buyer shall for any reason contrary to this provision sell the Goods or receive non-monetary consideration for the same, then such receipt whether in money or monies worth shall be held by the Buyer in trust for the Seller as part consideration for the Price. Any shortfall will be made up by the Buyer without delay. The Buyer shall give the Seller unfettered rights of access to the Buyer's premises or such at which the Goods are located and the right for the Seller to enter such premises and take away the Goods at any time whether with or without notice being given to the Buyer.
- 8.3 Risk shall pass on delivery of the Goods.

9. REMEDIES OF BUYER

- 9.1 Where the Buyer accepts or is deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
- 9.2 The Seller shall not be financially liable to the Buyer for late delivery or short delivery of the Goods. Payment for Goods delivered late or part deliveries shall be paid in accordance with Condition 3 of these Conditions.

10. SELLER'S LIABILITY

- 10.1 In the event of any breach of these Terms and Conditions by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price for the Goods PROVIDED THAT in the event of any faulty Goods, the Buyer must notify the Seller in writing within 48 hours of delivery and give the Seller a reasonable opportunity of either, in its absolute discretion:-
- (i) rectifying the faulty or defective Goods provided the Goods are returned to the Seller's normal trading premises; or
 - (ii) providing replacement Goods; or
 - (iii) refunding the Price to the Buyer
- 10.2 Under no circumstances shall the Buyer have the right to claim nor any right of action against the Seller arising in respect of any defect in the Goods (whether in Contract or in tort (including negligence)) for:-
- (i) loss of profit or direct or indirect loss or direct or indirect consequential loss of whatsoever nature or howsoever arising; nor
 - (ii) except as restricted by law, injury to persons or damage to property, unless directly due to the Seller's acts or omissions directly attributable thereto.
- 10.3 The Seller shall not be liable for any representation made by its employees agents or servants unless it is made in writing.
- 10.4 The Seller shall not be liable to the Buyer for any loss of whatsoever nature or howsoever arising where the cause is due to any alteration requested by the Buyer to any design or specification deviating from the Seller's standard ones in respect of the Goods.
- 10.5 The Seller shall not be liable to the Buyer for any loss of whatsoever nature or howsoever arising whether cause is due to any inadequate or inaccurate information and or specifications and or intended use of the Goods for the Buyers purposes.

11. STORAGE

Should the delivery of any Goods be delayed at the request of the Buyer then provided the full price of the Goods is paid by reference to the original Delivery Date then the Seller may in its absolute discretion postpone delivery. The Goods will be stored by the Seller at its own premises or elsewhere at the sole risk of the Buyer. The Seller will invoice the Buyer all storage, insurance and transport charges, which shall form part of the price and be payable within 3 Business Days following actual delivery together with interest for any late payment calculated in accordance with Condition 3.6 above.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a **Force Majeure Event**. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. SPECIFICATION

- 13.1 All drawings, photographs, sales literature and descriptions of the Goods are intended for general information and identification purposes only and their accuracy cannot be guaranteed. Under no circumstances should such materials be construed as forming a material part of any offer or contract between the buyer and the Seller. All technical details supplied by the Seller in respect of any Goods or product are to be taken as indicative only.
- 13.2 Any statement or representation made by the Seller's employees, servants or agents to the Buyer shall not form part of the Contract with the Buyer unless expressly confirmed in writing by the Seller.

14. CANCELLATION

The Buyer shall not cancel any order or part order for Goods without the prior written consent of the Seller on terms that the Buyer will indemnify the Seller against all direct and indirect loss and expense incurred in so doing.

15. BUYER'S INSOLVENCY

- 15.1 If the Buyer becomes subject to any of the events listed in Condition 15.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.
- 15.2 For the purposes of Condition 15.1, the relevant events are:
- (a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
 - (g) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2 (a) to clause 15.2 (h) (inclusive);
 - (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - (k) the Buyer's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 15.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. GENERAL

16.1 Assignment and Subcontracting.

- (a) The Seller may at any time assign, transfer, charge, subcontract 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, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 16.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 16.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 16.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

- 16.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

17. INTELLECTUAL PROPERTY

- 17.1 You may access, view, download and print out one copy of Town & Country Fine Foods' Website and all information, images, and other content displayed on the Website ("Materials") strictly in accordance with these Terms of Use.
- 17.2 You may only view, print out, use, quote from and cite the Website and the Materials for your own personal, non-commercial use and on the condition that you give appropriate acknowledgement where appropriate to Town & Country Fine Foods. All intellectual property rights in and to the Website and the Materials are either owned by or licensed to us and your use of the Website and Materials is subject to the following restrictions.
- 17.3 You must not:
- (a) remove any copyright or other proprietary notices contained in the Materials;
 - (b) use any Materials from the Website or Price List in any manner that may infringe any copyright, intellectual property right or proprietary right of us or any third parties; or
 - (c) reproduce, modify, display, perform, publish, distribute, disseminate, broadcast, frame, communicate to the public or circulate to any third party or exploit Town & Country Fine Foods' Website and/or the Materials or Price List for any commercial purpose, without our prior written consent.
- 17.4 We try to ensure that our website is free from viruses or defects. However, we cannot guarantee that your use of our website or any websites accessible through it will not cause damage to your computer. It is your responsibility to ensure that the right equipment is available to use the website. Except in the case of negligence on our part, we will not be liable to any person for any loss or damage which may arise to computer equipment as a result of using this website.