

The buyer's attention is in particular drawn to the provisions of condition 7.3, 8.1.1 and 10.4.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: Lingwood Food Services Limited.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Disadvantaged Party: means, in relation to a Hardship, the party (or parties) to this Agreement that suffered (or reasonably anticipates suffering) a detrimental change to its benefits and/or obligations under this Agreement caused by the Hardship.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Hardship: means a material change in the balance of a party's benefits and obligations under this Agreement caused by a legal, technical, political, economic or financial event (or events) that occurs during the term of this Agreement which:

- (a) is not a force majeure event or circumstance to which condition 13 relates;
 - (a) could not reasonably have been anticipated, mitigated against or avoided by the Disadvantaged Party at the time of execution of this Agreement;
 - (b) is beyond the control of Disadvantaged Party; and
 - (c) the risk of which is not otherwise assumed (expressly or by implication) by the Disadvantaged Party under this Agreement.
- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 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 the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company and (where a deposit is payable), that deposit has been received in cleared funds or (if earlier) the Company delivers the Goods to the Buyer.

- 2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or on the Company's website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.

- 4.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery and the Buyer has paid the Prior-to-Delivery Payment (as defined in condition 8).

- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time, however the Company shall use its reasonable endeavours to meet any agreed delivery date.

- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or the Buyer has failed to pay the Prior-to-Delivery Payment by its due date:

- (a) risk in the Goods shall pass to the Buyer;
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all directly related costs and expenses (including, without limitation, storage and insurance).

- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods. The Company shall provide clear instructions prior to delivery regarding the weight and size of products for lifting purposes

- 4.7 The Company shall not be required to install the goods at the Buyer's premises unless the parties have agreed in writing prior to delivery.
5. **NON-DELIVERY**
- 5.1 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
6. **RISK/TITLE**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.7 On termination of the Contract, howsoever caused, the rights contained in this condition 6 shall remain in effect.
7. **PRICE**
- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the quotation provided to the Buyer by the Company.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation unloading, which amounts the Buyer shall pay in addition when it is due to pay for the Goods. The costs of packaging, loading, carriage and insurance shall be included in the price.
- 7.3 The quotation is quoted in pounds sterling at the Euro conversion rate set out in the quotation. Variations either up or down in the exchange rate may alter the final purchase price of the Goods. The Company reserves the right to amend the final invoice amount to account for currency fluctuations.
8. **PAYMENT**
- 8.1 Subject to conditions 8.4, 8.7, and unless otherwise agreed by the parties in writing, payment of the price for the Goods is due in pounds sterling in the following instalments:
- 8.1.1 40% by way of NON-REFUNDABLE Deposit ("**the Deposit**") payable upon making the order;
 - 8.1.2 50% by way of payment prior to delivery ("**the Prior to Delivery Payment**") payable forthwith upon receipt of invoice from the Company. The Goods shall not be delivered until the Prior to Delivery Payment has been received by the Company in cleared funds; and
 - 8.1.3 10% within 30 days after delivery of the Goods.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8.7 Where the Goods which are the subject of the Contract are spare parts payment will be due within 30 days of invoice.
9. **QUALITY**
- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 6 months from the date of delivery, the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - (b) be fit for their normal purpose; and
 - (c) be fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit by the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods.
- 9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
 - (b) the defect arises because the Buyer failed to follow the Company's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall make the Goods or the part of such Goods which is defective available for collection by the Company, at the Company's expense.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.
- 10. LIMITATION OF LIABILITY**
- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11. TERMINATION**
- 11.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;
 - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in condition 11.1(a) to condition 11.1(d) or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment and fails to remedy this within 48 hours of such payment date.
- 11.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 12. ASSIGNMENT**
- 12.1 Neither party shall be entitled to assign the Contract or any part of it without the prior written consent of the other

- party (such consent not to be unreasonably withheld or delayed).
13. **FORCE MAJEURE**
The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, or strikes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
14. **HARDSHIP**
14.1 In the event of Hardship a Disadvantaged Party (or where both parties are Disadvantaged Parties, each party) may submit a request to the other party to renegotiate such provisions of this Agreement that are affected by the Hardship (the Hardship Notice). The Hardship Notice must:
- (a) be submitted in writing;
 - (b) include details and evidence of the event causing the Hardship and the resulting impact including the increased burden or loss of benefit suffered or anticipated by the Disadvantaged Party;
 - (c) specify the changes that the Disadvantaged Party is proposing to this Agreement to remove or alleviate the effect of the Hardship; and
 - (d) be delivered promptly following the date of the Disadvantaged Party's actual knowledge of the impact of the Hardship.
- 14.2 Following receipt of the Hardship Notice by the other party, the parties agree to use reasonable endeavours to promptly renegotiate this Agreement in good faith so as to avoid or mitigate the Hardship to the extent reasonably possible.
- 14.3 If the parties are unable to agree written amendments to this Agreement in accordance with condition 14.2 within 30 days of the date of receipt of the Hardship Notice, then the matter shall be referred to the managing director of each party (or persons of equivalent seniority). The managing directors (or equivalent) will meet within fourteen days to discuss the dispute and attempt to resolve it on the same basis as set out in condition 14.2 within 7 days.
- 14.4 If the parties are unable to agree written amendments to this Agreement within the period set out in condition 14.3, either party may terminate this Agreement by giving the other party notice in writing.
- 14.5 The provisions of this condition 14 are without prejudice to any other rights and remedies the parties may have under this Agreement or otherwise. A Disadvantaged Party is not excused from any non-performance of its obligations in connection with this Agreement and remains fully liable for its obligations under this Agreement except to the extent otherwise expressly agreed by the parties in writing.
15. **GENERAL**
15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
16. **COMMUNICATIONS**
16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer; or
 - (c) by e-mail to an address notified to the sending party by the recipient party in writing.
- 16.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery;
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
 - (d) if sent by e-mail, at the time that it was sent.