



Pacific West Foods (UK) Ltd

Terms of Trading & Conditions

1. Application and entire agreement

- 1.1. These Terms of Trading and Conditions will apply to the purchase of the goods detailed in our quotation (Goods) by the buyer (you) from (we or us).
- 1.2. These Terms of Trading and Conditions will be deemed to have been accepted by you when you accept them or the quotation or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between us and you.
- 1.3. These Terms of Trading and Conditions and the quotation (together, the Contract) apply to the purchase and sale of any Goods between us and you, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. Interpretation

- 2.1. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
- 2.2. The headings in these Terms of Trading and Conditions are for convenience only and will not affect their interpretation.
- 2.3. Words imparting the singular number include the plural and vice-versa.

3. Goods

- 3.1. The description of the Goods is set out in our sales documentation, unless expressly changed in our quotation. In accepting the quotation you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.
- 3.2. We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

4. Price

- 4.1. The Price quoted excludes VAT (unless otherwise stated). If applicable, VAT will be charged at the rate applying at the time of delivery.
- 4.2. Our quotations lapse after 7 days (unless otherwise agreed).
- 4.3. The Price quoted includes delivery (unless otherwise stated).
- 4.4. Unless otherwise stated, the Price quoted is an illustrative estimate only and the Price charged will be our price current at the time of delivery.
- 4.5. Rates of tax and duties on the goods will be those applying at the time of delivery.
- 4.6. If the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we can increase the Price prior to delivery.
- 4.7. Any increase in the Price under the clause above will only take place after we have told you about it.
- 4.8. You may be entitled to discounts. Any and all discounts will be at our discretion.
- 4.9. The Price is inclusive of fees for packaging and transportation.
- 4.10. The Price of the Goods is set out in our quotation current at the date of your order or such other price as we may agree in writing.



5. Payment terms

- 5.1. You are to pay us in advance with cleared funds, unless you have an approved credit account.
- 5.2. If you have an approved business credit account, payment is due no later than 30 days after the date of our invoice unless otherwise agreed in writing.
- 5.3. If you fail to pay us in full on the due date:
 - 5.3.1. we may suspend or cancel future deliveries;
 - 5.3.2. we may cancel any discount offered to you;
 - 5.3.3. if you do not pay within the period set out in 5.1 and 5.2 above, we will suspend any further deliveries to you and without limiting any of our other rights or remedies for statutory interest, charge you interest the rate of 5% of the bank of England from time to time on the amount outstanding until you pay in full:
 - 5.3.4. calculated (on a daily basis) from the date of our invoice until payment;
 - 5.3.5. compounded on the first day of each calendar month; and
 - 5.3.6. before and after any judgement (unless the court orders otherwise).
- 5.4. If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 5.5. You do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.6. While you owe money to us, we have a lien on any of your property in our possession.
- 5.7. You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.
- 5.8. We will invoice you for the Price either:
 - 5.8.1. on or at any time after delivery of the Goods; or
 - 5.8.2. where the Goods are to be collected by you or where you wrongfully do not take delivery
 - 5.8.3. of the Goods, at any time after we have notified you that the Goods are ready for
 - 5.8.4. collection or we have tried to deliver them.
- 5.9. You must pay the Price within 30 days of the date of our invoice or otherwise according to
 - 5.9.1. any credit terms agreed between us.
- 5.10. Time for payment will be of the essence of the Contract between us and you.
- 5.11. You must make payment even if delivery has not have taken place and / or that the title in the Goods has not passed to you.
- 5.12. All payments must be made in British Pounds unless otherwise agreed in writing between us.
- 5.13. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part

6. Delivery

- 6.1. We will arrange for the delivery of the Goods to the address specified in the quotation, or your order or to another location we agree in writing.
- 6.2. If you do not specify a delivery address or if we both agree, you must collect the Goods from



- 6.2.1.our premises.
- 6.3. Subject to the specific terms of any special delivery service, delivery can take place at any time of the day and must be accepted at any time between 6 am to 6 pm.
- 6.4. If you do not take delivery of the Goods we may, at our discretion and without prejudice to
 - 6.4.1.any other rights:
 - 6.4.2.store or arrange for the storage of the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
 - 6.4.3.make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
 - 6.4.4.after 10 business days, resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the price of the Goods
- 6.5. We can deliver the Goods by instalments. Each instalment is a separate contract. Will be invoiced and paid for separately. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.
- 6.6. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond our control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7. Delivery and safety

- 7.1. We may decline to deliver if:
- 7.2. we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
- 7.3. the premises (or the access to them) are unsuitable for our vehicle.

8. Title

- 8.1. Until you pay all debts you may owe us:
 - 8.1.1.all goods supplied by us remain our property;
 - 8.1.2.you must store them so that they are clearly identifiable as our property;
 - 8.1.3.you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
 - 8.1.4.you may use those goods and sell them in the ordinary course of your business, but not if:
 - 8.1.5.we revoke that right (by informing you in writing); or
 - 8.1.6.you become insolvent.
- 8.2. You must inform us (in writing) immediately if you become insolvent.
- 8.3. If your right to use and sell the goods ends you must allow us to remove the goods.
- 8.4. We have your permission to enter any premises where the goods may be stored:
 - 8.4.1.at any time, to inspect them; and
- 8.5. after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 8.6. Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 8.7. You are not our agent. You have no authority to make any contract on our behalf or in our name.
- 8.8. Title to the Goods will not pass to you until we have received payment in full (in cash or cleared funds) for:
 - 8.8.1. the Goods and/or
 - 8.8.2. any other goods or services that we have supplied to you in respect of which payment has become due.



- 8.9. Until title to the Goods has passed to you, you must
 - 8.9.1. hold the Goods on a fiduciary basis as our bailee; and/or
 - 8.9.2. store the goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and/or
 - 8.9.3. keep the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- 8.10. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or of any Third party where the goods are stored in order to recover them.

9. Risk

- 9.1. The goods are at your risk from the time of delivery.
- 9.2. Delivery takes place either:
 - 9.2.1. at our premises (if you are collecting them or arranging carriage); or
 - 9.2.2. at your premises (if we are arranging carriage).
- 9.3. You must inspect the goods on delivery. If any goods are damaged (or not delivered), you must inform us immediately and in any event write to tell us within five working days of delivery (or the expected delivery time). You must make a note of any shortages or damaged goods on the carrier's delivery note. You must enclose with your correspondence a copy of the carrier's delivery note. You must give us (and any carrier) a fair chance to inspect the damaged goods.
- 9.4. The risk in the Goods will pass to you on completion of delivery.

10. Warranties

- 10.1. We warrant that the goods:
 - 10.1.1. comply with their description on our acknowledgement of order form; and
 - 10.1.2. are free from material defect at the time of delivery (as long as you comply with clause).
- 10.2. We warrant that the goods are free from material defect at the time of delivery (as long as you comply with clause)
- 10.3. We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 10.4. If you believe that we have delivered goods which are defective in materials or workmanship, you must:
 - 10.4.1. inform us (in writing), with full details, as soon as possible; and
 - 10.4.2. allow us to investigate (we may need access to your premises and product samples).
- 10.5. If the goods are found to be defective in quantity, material or workmanship (following our investigations, and you have complied with those conditions in full, we will (at our option) replace the goods or refund the price.
- 10.6. We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 10.7. For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 10.8. Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.



11. Specification

11.1. If we prepare the goods in accordance with your specifications or instructions you must then ensure that the specifications or instructions are accurate. You must ensure that goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them

12. Return of goods

12.1. We will accept the return of goods from you only:

12.1.1. by prior arrangement (confirmed in writing);

12.1.2. on payment of an agreed handling charge (unless the goods were defective when delivered); and

12.1.3. where the goods are as fit for sale on their return as they were on delivery.

13. Export terms

13.1. Clause 13 of these terms shall apply to exports except where inconsistent with any written agreement between us.

13.2. Where the goods are supplied by us to you by way of export from the United Kingdom then the 'Incoterms' of the International Chamber of Commerce which are in force at the time of the date when the contract is made shall apply.

13.3. The Incoterms are treated as amended by these terms (read as a whole) to the extent that they are inconsistent with them.

13.4. you are responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties due.

13.5. Where the goods are to be sent by us to you by a route including sea transport we shall be under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

13.6. You are responsible for arranging the testing and inspection of the goods at our premises before shipment except where otherwise agreed. We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

13.7. Payment of all amounts due to us shall be made as stipulated by us, unless otherwise agreed in writing.

13.8. We shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair contract Terms Act 1977).

14. Cancellation

14.1. If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.

14.2. We may suspend or cancel the order, by written notice if:

14.2.1. you fail to pay us any money when due (under the order or otherwise);

14.2.2. you become insolvent;

14.2.3. you fail to honour your obligations under these terms.

14.3. You may not cancel the order unless we agree in writing.

15. Waiver and variations

15.1. Any waiver or variation of these terms is binding in honour only unless:

15.1.1. made (or recorded) in writing;

15.1.2. signed on behalf of each party; and

15.1.3. expressly stating an intention to vary these terms.



15.2. All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

16. Force majeure

16.1. If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability,

16.2. Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

17. General

17.1. English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction. If you bring a claim against us, you must bring it in our home court.

17.2. If you are more than one person, each of you has joint and several obligations under these terms.

17.3. If any of these terms are unenforceable as drafted:

17.4. it will not affect the enforceability of any other of these terms; and

17.5. if it would be enforceable if amended, it will be treated as so amended.

17.6. We may treat you as insolvent if:

17.7. you are unable to pay your debts as they fall due; or

17.8. you (or any item of your property) become the subject of:

17.8.1. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

17.8.2. any application or proposal for any formal insolvency procedure; or

17.8.3. any application, procedure or proposal overseas with similar effect or purpose.

17.9. All brochures, catalogues, product lists and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.

17.10. Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.

17.11. No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

17.12. The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:

17.13. contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or

17.14. which expressly state that you may rely on them when entering into the contract.

17.15. Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

18. General Data Protection Regulation

18.1. Protecting your personal information is incredibly important to Pacific West Foods (UK) Ltd.

18.2. Our privacy policy which sets out how we do this is available on our website at www.pacificwestfoods.co.uk

18.3. This policy explains the information that we hold, how we use it and how long we keep it for. Please take a few minutes to read it.