

TERMS AND CONDITIONS OF SALE

1. GENERAL

- [a] In these terms and conditions "Conditions" means these terms and conditions. The "Company" means Tulip Limited. The "Customer" means any person, firm, company or other entity whose order for goods is accepted by the Company, the "Goods" means the goods being supplied by the Company.
- [b] All and any business undertaken by the Company is transacted subject to the Terms and Conditions hereinafter set out each of which shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer and the Customer may only place an order and the Company may only accept an order for Goods which is subject to these Conditions.
- [c] No agent or employee of the Company has the Company's authority to alter or vary these Conditions unless confirmed by a Director of the Company in writing.
- [d] The Customer entering into a transaction with the Company expressly warrants that it is authorised to accept and accepts these Conditions not only for itself but also as agent for and on behalf of all other persons who are or may thereafter become interested in the Company's Goods whether in whole or in part.
- [e] No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer, unless otherwise agreed by the company or at the Company's discretion.
- [f] These Conditions shall have precedence over any Conditions appearing on the Customer's order form or any other documents emanating from the Customer or its agents and any such Customer's conditions will have no effect unless accepted in writing by the Company. These Conditions shall be deemed to be incorporated in all documents emanating from the Company and acceptance of delivery of the Goods from the Company shall be conclusive evidence before any court or arbitrator that the Conditions apply to the sale of such Goods.
- [g] The Customer 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 these Conditions. Nothing in these Conditions shall exclude or limit the Company's liability for fraudulent misrepresentation.

2. ACCEPTANCE OF ORDERS

- The Company reserves the right not to accept the order, or, if accepted, not to deliver the order until payment is received to bring the Customer's account within its credit limit and shall notify the Customer as soon as reasonably practicable if such circumstances arise. The Company reserves the right to vary or withdraw a Customer's credit limit as the Company shall in its absolute discretion think fit and the Company shall be entitled to refuse to deliver Goods on credit whether an order has been accepted or not, should the Company consider it appropriate in the circumstances.

3. DATA PROTECTION

- The Company may carry out a search through a credit reference agency or make enquiries about the Directors or Owners of the Customer. A record of our search will be kept for as long as reasonably necessary. Information on the credit performance of the Customer (which for the avoidance of doubt shall not contain any personal data as defined in the Data Protection Act 1998) will be maintained and may be made available to other organisations to assess the Customer's credit worthiness.

4. DELIVERY

- Deliveries under the minimum agreed quantities will be surcharged with the extra cost incurred. Details of extra charges will be made available upon request at the time of acceptance of Order by the Company. Where the Customer is unable or unwilling to accept delivery within 7 days of the due date the Company may rescind the contract without prejudice to its other remedies.
- [a] The quantity of any consignment of Goods recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary.
- [b] The Company shall not be liable for any loss or damage to the Goods in transit, direct or consequential loss (all three terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs charges, expenses or damage suffered by the Customer by reason of delay in making deliveries including, without limiting the generality of the foregoing, delay due to the negligence of the Company. Unless otherwise agreed, delivery shall take place when the Goods are delivered to the Customer at the address specified on the despatch note.
- [c] In the event that the Customer requests postponement of delivery or refuses to accept delivery, the Company reserves the right to cancel the order or to make a storage charge of not more than 5% of the invoice value of the Goods ordered per month together with any additional transport charges and extra handling costs caused by the Customer's failure to take delivery on the due date.
- [d] The Company may deliver by instalments and each instalment shall be deemed to be sold under a separate contract and no failure of or delay in delivery of any instalment or any defect in the contents thereof shall entitle the Customer to treat the contract as repudiated with regard to any remaining instalments.
- [e] Time for delivery shall not be of the essence.

5. DELIVERY OF NUMBERS

- The Company reserves the right on accepting Orders to deliver (whether in any particular weight range of the Goods ordered or in the total numbers of Goods ordered) such numbers of the Goods as shall not vary by more than 5% (either more or less) from the number ordered and the Customer shall pay to the Company for the number so delivered.

- [b] Where the product is not available at the requested time of delivery then the Company reserves the right to substitute an equivalent product in its place and this product will be invoiced in accordance with Clause 4 above]

6. PRICES

- Selling prices are subject to alteration without prior notice. Unless the Company has quoted a net price or a fixed price contract has been agreed between the Company and the Customer, the price charged will be that published in the Company's trade price list, valid at the date of acceptance of order, less any trade discount confirmed the Company to the Customer in writing.

- [b] The Customer should check the invoice and inform the Company within seven days of receipt of any disputed prices. Failure to do so will not override any of the conditions in Terms of Payment below and may affect any credit limit granted by the Company to the Customer.

7. TERMS OF PAYMENT

- [a] Unless otherwise agreed, payment is due within 28 days of the date of the Company's invoice, such invoice to be submitted to the Customer on or at any time after delivery.
- [b] The said period of 28 days shall be of the essence of the contract and should the Customer fail to pay in full for any consignment within the said 28 days, then without prejudice to any other remedy available to the Company the Customer shall pay interest on the outstanding amounts (from the due date of payment until actual payment) at the rate of 8% per annum above the base rate for the time being of the Bank of England accruing on a daily basis until payment is made whether before or after any judgment.
- [c] Where payment in full in respect of any consignment is not made on or before the due date the Company shall have the right to retain any further Goods which may be due for delivery until such time as all outstanding amounts are paid in full together with such amounts as the Company in its absolute discretion may require to cover the value of the Goods awaiting delivery.
- [d] Payments may not be withheld or set off for any reason without the Company's consent. The Company may sue for the price of any Goods even if property in them has not passed to the Customer.
- [e] The Company alone shall have the right to appropriate as it thinks fit, any payment received by it from or on behalf of the Customer to the whole or any part of any debt whatsoever due owing or incurred by the Customer to it at the time such payment is received. Any purported appropriation by the Customer, whether prior or subsequent, shall be of no effect.

- [f] Payment shall become due immediately upon the occurrence of any of the following:-

- [i] the commission of any act of bankruptcy by or in respect of the Customer
- [ii] the appointment of any receiver of the Customer
- [iii] the commencement of any proceedings for the winding up of the Customer
- [iv] the giving of notice of intention to move a resolution that the Customer be wound up
- [v] the presentation of a petition for an Administration Order in respect of the Customer
- [vi] the making of a proposal for a composition in satisfaction of the Customer's debts or for a scheme of arrangement of the Customer's affairs.
- [vii] any event occurs or proceedings are taken, with respect to the Customer, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 7(i)-(vi) above.

8. RETURNS

- The Company shall not be obliged to accept the return of any Goods if delivered in accordance with the Customer's order.

9. CLAIMS FOR LOSS OR DAMAGE

- [a] The Customer shall immediately upon delivery to the Customer's premises or the designated delivery address nominated by the Customer, examine the Goods and shall notify the Company in writing of any apparent product damage, defect, visible or invisible fault, or shortage within 48 hours following delivery.
- [b] The Company shall not be liable for any claims unless notice is given in writing within 48 hours of delivery of the Goods and the Goods have been stored in a coldstore of the appropriate temperature for the product, namely 0-2°C for chilled and cooked meats and no higher than minus 18°C for frozen products at any time.
- [c] In respect of both visible and invisible faults the Company reserves the right to inspect Goods claimed to be faulty and carry out such tests as it may feel is necessary. Faulty Goods shall be returned to the Company and the reasonable costs of returning the faulty Goods shall be borne by the Customer.

10. WARRANTY AND LIABILITY

- [a] To the fullest extent legally permissible, all conditions and warranties whether express or implied by statute, common law, trade usage or otherwise are excluded, save as set out expressly in these Conditions.
- [b] The Company warrants that on delivery the Goods are reasonably free from defects in materials and workmanship. All other warranties and conditions whether express or implied by statute or otherwise in respect of defect, quality, or fitness for purpose of the Goods are excluded, unless otherwise agreed, or where the goods are ex-stock which will not meet these requirements.
- [c] The Company's liability under these Conditions shall only arise if any claim is notified in accordance with Clause 9 above.
- [d] Subject to Clause 9(c) the Company shall discharge in full any proven liability to the Customer arising under the warranties set out in Clause 9(b) above or otherwise as a result of breach of the Conditions in full by replacing the Goods at its discretion and the Customer shall accept such replacement in satisfaction of any claims it may have in respect of the defects.

- PROVIDED THAT the Goods are sold by the Customer to a consumer (as defined in the Consumer Transaction (Restrictions on Statements) Order 1976) and as a result a claim arises against the Customer in respect of the Goods, then the Company may discharge its liability by indemnifying the Customer against any court order made against it or any financial settlement in favour of the consumer arising from such claim insofar as it can be attributed to a breach by the Company. This indemnity shall be limited to a maximum of £50,000 for each claim and be subject to the Customer

- [i] co-operating with the Company in dealing with the claim;
- [ii] keeping the Company informed of all matters relating to the claim;
- [iii] conducting any proceeding or negotiations for settlement in accordance with the Company's written instructions.

- [e] Subject to Clause 10(g) below, where the Customer suffers direct physical loss or damage which is shown to have arisen directly from a breach of these Conditions by the Company, then the Company's liability for such loss or damage shall be limited to a maximum of £50,000.

- [f] Subject to Clause 10(g) below and Clauses 10(d) and (e) above, the Company shall not be liable for any loss or damage whatsoever, whether direct or indirect (including but not limited to loss of profit and goodwill and any loss which at the time this contract was made was not a reasonably foreseeable result of the breach of warranty or conditions whether or not it was a direct and natural result of that breach) and whether arising through negligence, misrepresentation, breach of any statutory duty, or of any condition, warranty or other term (express or implied) of any contract or otherwise.
- [g] Nothing in these Terms shall limit the Company's liability arising from Section 12 of the Sales of Goods Act 1979 or in respect of any claim for death or personal injury caused by the negligence of the Company, under Part 1 of the Consumer Protection Act 1987, or any other liability to the extent that it cannot be limited or excluded at law.
- [h] The parties agree that the restrictions in this Clause are reasonable in the light of their relationship and the availability of insurance cover.

- [i] The Company shall not be liable for any form of consequential loss (including without limitation loss of profit or of contracts).

11. PACKAGING MATERIALS AND COMPANY EQUIPMENT

- [a] The Company shall not be liable for any fault arising out of defective packing materials supplied by the Customer.
- [b] In the case of any order or part order of Goods cancelled by the Customer where the Customer has requested that custom made packaging and/or labelling specific to the Customer be used for such Goods the Customer shall fully reimburse within 14 days of such cancellation the cost of such packaging and/or labelling to the Company.
- [c] The Company requires the Customer to return any equipment owned or hired by the Company and reimburse any costs incurred due to no fault of the Company. The Customer shall make available such materials for collection to the Company. In the event the Customer fails to make such materials available to the Company at the time specified by the Company, the Company may invoice the Customer for the cost to the Company of replacing such materials.

12. INDEMNITY

- Where the Goods are produced by the Company in accordance with the Customer's specifications, the Customer shall wholly indemnify the Company against all costs, claims, damages and/or expenses to which the Company may become liable as a result of the infringement or the alleged infringement of any patent, registered design or any other intellectual property right.

13. SET OFF AND COUNTERCLAIM

- The Customer shall not be entitled to set off any sum or right of action against the price of the Goods or against any claim for damages for non-payment of the price and, without prejudice to the generality of the foregoing, the Customer shall not set off or counterclaim for any such sum or right of action in any proceedings brought by the Company to recover the price or damages for non-payment of the price.

14. RISK AND TITLE

- [a] Upon delivery of the Goods to specified address or to public coldstore in accordance with Clause 3 above the risk in the Goods shall pass to the Customer, but the Goods shall remain the sole property of the Company as legal and equitable owner until such time as the price of the Goods has been paid in full to the Company.
- [b] Until property in the Goods passes to the Customer, the Customer shall be the bailee of the Goods for the Company and shall:-
- [i] store the Goods securely, safely, separately from the Customer's own Goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company;
 - [ii] maintain Insurance for the Goods at full value against theft of, loss or damage to the Goods;
- The Company's consent to the Customer's possession of the Goods and any right the Customer may have to possession of the Goods shall cease at whichever is the earliest of the following events:-
- [iii] if any sum (whether in respect of the Goods or otherwise however) is not paid to the Company by or on behalf of the Customer on or before the date when it is due;
 - [iv] if the Customer, not being a company, applies for an interim order or proposes a voluntary arrangement with the Customer's creditors under Part VIII of the Insolvency Act 1986 or does or fails to do anything which would entitle a Petition for a bankruptcy order to be presented;
 - [v] if the Customer, being a company, does or fails to do anything which would entitle any person to appoint a receiver of the whole or any part of the Customer's assets or which would entitle any person to present a Petition for an Administration Order or the Winding Up of the Customer.

- [c] The Customer shall store the Goods safely and securely and shall maintain them at an appropriate temperature which will be no greater than minus 18°C for frozen products and 0-2°C for chilled and cooked meats.

- [d] The Company may, for the purpose of inspecting or recovering its Goods, enter upon any premises where they are stored or where the Company reasonably believes them to be stored. It is agreed between the Company and the Customer that the Company's authority to inspect and recover its Goods under this Condition is deemed to be an irrevocable licence.

- [e] While the Customer is in possession of the Goods, with the Company's consent (but not otherwise), the Customer may resell the Goods provided that such sale is in the ordinary course of the Customer's business.

- [i] As between the Customer and its sub-buyer, the Customer shall sell the Goods as principal. The Customer has no right to and shall not commit the Company to any contractual relationship with or liability to the sub-buyer or any other person.

- [ii] As between the Company and the Customer, the Customer shall sell the Goods as fiduciary agent of the Company. The Customer shall hold the proceeds of any such sales on trust for the Company and shall not mingle such proceeds with other monies or pay them into an overdrawn bank account. Notwithstanding any agreed period of credit for payment of the price of the Goods, the Customer shall pay the proceeds of such sales to the Company forthwith upon receipt.

15. DEFAULT OR INSOLVENCY OF THE CUSTOMER

- If the Customer shall fail to take delivery of any Goods when required or make default in or commit a breach of any of its obligations under these Conditions or any other agreement with the Company or if any distress or execution or other legal process shall be levied upon any of the Customer's property Goods or assets or any part thereof or if the Customer ceases, or threatens to cease to trade, or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or being a limited company, the Customer shall become insolvent or go into liquidation or consider a resolution that it should be placed into liquidation, or suffer a petition to be presented that it be placed in liquidation, or suffer the appointment of a receiver, administrative receiver or manager of its undertaking property or assets or any part thereof, or be adjudicated a bankrupt or take advantage of any insolvency act (or in each case the equivalent in any jurisdiction) or exceeds its credit limit (if any) with the Company, the Company shall at any time thereafter be entitled to terminate this Contract without prejudice to its other rights hereunder recover from the Customer any monies owed to the Company relating to these Conditions and any property owned or hired by the Company in the possession of the Customer. All sums outstanding or yet to accrue due in respect of any contracts subsisting prior to such termination shall automatically become due and payable. Without prejudice to the foregoing, the Company may in the event of the Customer's default in paying any sum due under this Agreement or any other agreement, suspend delivery of the Goods until such default shall have been made good.

16. FORCE MAJEURE

- The Company shall not be liable in any way for loss, damage or expense arising directly or indirectly from any failure or delay in performing any obligation under these Conditions caused by any circumstance beyond its reasonable control, which shall be deemed to include without limitation industrial disputes whether or not the Company or the Customer are directly involved.

17. ASSIGNMENT

- Rights and obligations under these Conditions are not to be assigned or transferred by the Customer without the prior written consent of the Company.

18. WAIVERS

- The Company's rights and remedies shall not be prejudiced by any indulgence or forbearance to the Customer and no waiver by the Company of any breach by the Customer shall operate as a waiver of any subsequent breach.

19. SEVERABILITY

- If any provision of these Conditions is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

20. STATUTORY REGULATIONS

- The Company warrants either

- [a] that the Goods are only upon delivery to the Customer to the specification detailed by the legislation warrants said produce for the purpose it was entailed and any statutory modifications or re-enactments of any of them; or
- [b] that invoices or other documents shall be furnished sufficient to comply with the said legislation.

21. THIRD PARTY RIGHTS

- The Customer and the Company do not intend that any term of these Conditions shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

22. SURVIVAL OF OBLIGATIONS

- On termination of these Conditions, howsoever caused, Conditions 10, 11, 12, 14 and 23 shall continue in full force and effect.

23. GOVERNING LAW AND CONSTRUCTION

- These Conditions shall be governed by and construed in accordance with English Law. The Uniform Laws on International Sales Act 1967 shall not apply in any respect to this Contract. In the event of any conflict between the English Language text hereof and any translation, the English Language text shall prevail. If any dispute arises in connection with these Conditions, the dispute shall be referred to and finally resolved by arbitration. CEDR shall be the appointing body and administer the arbitration. CEDR shall apply the LCIA rules in force at the time the arbitration is initiated. In any arbitration commenced pursuant to this clause, the number of arbitrators shall be three and the seat or legal place of arbitration shall be London, England. Provided that nothing in this Condition shall prevent the Company from pursuing an action in court in the appropriate jurisdiction in respect of non-payment by the Customer of any sums due to the Company. The courts of England shall have non-exclusive jurisdiction to settle any claim,