

Lupa Foods Ltd: Terms & Conditions



1. DEFINITIONS

- i) "Buyer" means the person, firm or company whose Order is accepted by the Seller.
- ii) "Seller" means: Lupa Foods Ltd. Registered Office: Suite A31, Third Floor, Elstree Tower, Elstree Way, Borehamwood, Herts WD6 1SD. Registered number 4934963
- iii) "Goods" means all goods and services to be supplied by the Seller and referred to in the Order and includes related packaging, other than pallets, unless otherwise notified by the Seller in writing and referred to in the Order.
- iv) "Food" means food as defined by the Food Safety Act 1990 and any regulations and amendments or relevant enactments thereof.
- v) "Contract" means the contract for purchase and sale of the Goods made between Buyer and Seller.
- vi) "Agent" means a person, firm or company acting on, or purporting to be acting on, behalf of the Buyer whether or not the Agent acts with the actual/express or apparent/implied authority of the Buyer.
- vii) "Conditions" means the conditions set out in this document and subject to which the Contract is made.
- viii) "Writing" includes electronic mail (e-mail), telex, facsimile transmission and comparable means of recorded communication.
- ix) "Order" means the order for the purchase of Goods notified by the Buyer to the Seller.
- x) "Specification" means the Seller's product specification for the Goods.
- xi) "Delivery" means either:
 - a) in the case of Goods which are to be delivered to the premises of the Buyer or a place nominated by the Buyer, the time when the delivery vehicle arrives at the premises prior to unloading; or
 - b) in the case of Goods which are to be collected from the Seller or a place nominated by the Seller, the time when the collection vehicle has been loaded.
- xii) "Price" means the price of the Goods agreed between Buyer and Seller when the Order was accepted, unless otherwise evidenced in writing and signed by a Director of each party. Where no price has been agreed between Buyer and Seller, but an Order has been accepted, the Price shall be that as invoiced.

2. GENERAL

- i) These Conditions apply to every Order accepted by the Seller to the exclusion of any other terms and conditions made or purported to be made by the Buyer. No variation to these Conditions shall be binding unless agreed in Writing and signed by a Director of the Seller. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing and signed by a Director of the Seller. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- ii) If the Contract is made with an Agent, then the Agent must declare this to the Seller and give full particulars of the identity of the Buyer.
- iii) If the Contract is made with an Agent, then the Contract is deemed to be made with the Buyer and the Agent hereby warrants that he has informed the Buyer of the existence and terms of the Contract and has the Buyer's authority to enter into the Contract.
- iv) Any reference in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.
- v) The headings in these Conditions are for convenience only and shall not affect their interpretation.
- vi) No waiver by the Seller of any breach of these Conditions or any other term of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- vii) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- viii) All Contracts made between the Buyer and the Seller shall be governed by the laws of England.

3. ACCEPTANCE OF ORDER

No Order submitted by a Buyer shall be deemed to have been accepted by the Seller until either it is confirmed in Writing by a Director of the Seller or Delivery of the Goods has been effected.

4. QUANTITY

Where Goods are to be supplied by the Seller in bulk, the Seller reserves the right to deliver up to 5% more or 5% less than the quantity ordered without any adjustment in the unit price, and the quantity so delivered shall be deemed to be the quantity ordered.

5. QUALITY

The quality of Goods shall be as defined within the Specification.

6. PRICE

- i) The Seller reserves the right, by giving notice to the Buyer in writing at any time before Delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, operation of duties, significant increase in cost of labour, materials or other costs of manufacture) or to any change in delivery quantities, quantities or specifications for the Goods that is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- ii) All prices quoted by the Seller are exclusive of VAT unless otherwise stated.

7. PAYMENT

- i) The Seller shall be entitled to invoice the Buyer on or at any time after Delivery of the Goods.
- ii) The Buyer shall make Payment for the full Price within 30 days from the date of the Invoice.
- iii) The Buyer shall not be entitled to set-off against the Price any sums owed to the Buyer by the Seller.
- iv) Payment will be deemed to have been made after such time as either:
 - a) full payment of the invoice value has been received in cash by the Seller; or
 - b) full payment of the invoice value by cheque has been paid into the Seller's bank account and has been cleared; or
 - c) full payment of the invoice value has been received by the Seller's bank by direct transfer from the Buyer's bank.
- v) If the Buyer fails to make any payment by the due date then, without prejudice to any right or remedy available to the Seller, interest may be charged by the Seller to the Buyer on the amount unpaid (both before and after judgement) until such time as full and final payment is received. The rate of interest shall be 5% per annum above Barclays Bank Base Rate from time to time.

8. CREDIT

The Buyer shall have no right to monetary credit from the Seller and, therefore, the Seller may at any time refuse to effect Delivery of an Order if the Buyer has an outstanding, but not necessarily overdue, debt with the Seller.

9. DELIVERY

- i) Any dates quoted for Delivery are approximate only and the Seller shall not be liable for any delay in the delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed in Writing and signed by a Director of the Seller. Delivery may be made by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- ii) Where the Goods are to be delivered in instalments, each Delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

10. PACKAGING

- i) All pallets used for the purpose of Delivery are supplied on a like-for-like exchange basis, unless otherwise notified by the Seller to the Buyer in Writing.
- ii) In the event that exchange pallets are not made available to the Seller, the cost of replacement will be charged to the Buyer.

11. TITLE AND RISK

- i) Risk of damage to or loss of the Goods shall pass to the Buyer:
 - a) in the case of Goods for Delivery at the Seller's premises, at the time when Goods are available for collection as notified by the Seller to the Buyer; or
 - b) in the case of Goods for Delivery otherwise than at the Seller's premises at the time of delivery; or
 - c) if the Buyer wrongfully fails to take Delivery of the Goods at the time when the Seller attempted delivery.
- ii) Notwithstanding Delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the Price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- iii) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agents and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored protected and insured.
- iv) Until such time as the property in the Goods passes to the Buyer (provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Goods are stored and to repossess the Goods.
- v) The Buyer shall not be entitled to pledge, or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

12. CONFIDENTIALITY

- i) The Buyer undertakes to the Seller to keep confidential all information (whether oral or in Writing) concerning the business and affairs of the Seller that the Buyer has obtained or received as a result of the discussions leading up to or the entering into the Contract and any other such information relating to other parties which is supplied by the Seller to the Buyer, save that which is:
 - a) already in the Buyer's possession other than as a result of a breach of this clause; or
 - b) in the public domain, other than as a result of a breach of this clause.

13. WARRANTY

- i) The Seller warrants as part of these Conditions, that:
 - a) All Food supplied by the Seller complies at the date of Delivery, in all respects, with the Food Safety Act 1990 and/or regulations made thereunder and all other United Kingdom and European Union legislation and regulations relating to the supply or sale of Food.
 - b) All Food supplied by the Seller complies at the date of delivery with the Specification.
 - c) Without prejudice to the generality of the foregoing, all such Food so supplied by the Seller has not been rendered injurious to health and complies with Food safety requirements and is of the nature, substance and quality described. Furthermore, it is not described, whether by means of label or otherwise, or presented in such a way, as to be false or misleading as to its nature, substance or quality.
 - d) All Food supplied by the Seller has been purchased from suppliers approved by the Seller.
 - e) Where reasonably practicable, quality checks are carried out on all Food supplied by the Seller to ascertain compliance with the aforementioned Act, Regulations and Specification.
 - f) The Seller's premises, equipment, machinery and processes are clean and in such a condition as to ensure the quality and hygiene of all Food supplied by the Seller.

14. REJECTIONS, CLAIMS AND LIABILITIES

- i) Any damages and shortages must be reported in writing at the time of Delivery and signed for accordingly. The Seller accepts no liability for any loss or damage not so notified.
- ii) The Buyer shall be entitled to reject Goods which are undamaged but not in accordance with the Specification provided that the Seller is notified in Writing within seven days of Delivery.
- iii) If rejected Goods are subsequently found to be in accordance with the Specification, then the Buyer will be liable for all associated costs incurred by the Seller including but not limited to transport and administration costs.
- iv) Should the Seller make Delivery of Goods that do not conform to Specification for any reason beyond the Seller's reasonable control, then the Seller will not be liable for any cost incurred by the Buyer, whether foreseen or unforeseen.
- v) Should the Seller make Delivery of Goods that do not conform to Specification for any reason within the Seller's reasonable control, and should the Seller then be unable to replace or reinstate the Goods with the goods which are in conformance with the Specification, liability to the Buyer will be limited to the reimbursement of any reasonable excess cost that the Buyer may have incurred in obtaining similar goods elsewhere in the cheapest available market.
- vi) Should the Seller fail to make Delivery of the Goods for any reason beyond the Seller's reasonable control, or if rejected Goods are subsequently found to be in accordance with the Specification, then the Seller will be liable to the Buyer, whether foreseen or unforeseen.
- vii) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the Specification is notified to the Seller in accordance with the Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge, or at the Seller's sole discretion, refund to the Buyer the Price of the Goods (or a proportionate part of the Price) but the Seller shall have no further liability to the Buyer, except as expressly stated in these Conditions.
- viii) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or implied warranty, condition or other term, or duty at common law, or under any express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims consequential compensation (and whether caused by the negligence of the Seller, its employees, agents or otherwise) which arise out of, or in connection with, the supply of Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the Price except as expressly provided in these Conditions.
- ix) If the Buyer fails to give the Seller adequate delivery instructions, or fails to take delivery of the Goods at the time stated for Delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other remedy available to the Seller the Seller may:
 - a) store the Goods until actual Delivery and charge the Buyer for reasonable costs (including insurance for storage); or
 - b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.

15. TERMINATION

- i) If the Buyer defaults in any of the Buyer's obligations under the Contract, becomes insolvent, has a receiver appointed, or is compulsorily or voluntarily wound up, or if the Seller, in good faith, believes that any such events may occur, the Seller shall be entitled at the Seller's discretion, and without prejudice to any other remedy, to suspend the performance of or terminate the Contract and, in the event of termination, to keep or take possession of any Goods or of any items belonging to the Seller and to enter any premises of the Buyer, or such other premises on which the Goods are kept, for that purpose.
- ii) No failure or delay on the part of the Seller to exercise any rights in respect of any default under the Contract by the Buyer, shall prejudice the Seller's rights in connection with the same or any subsequent default.

16. OTHER REMEDIES

Nothing in these Conditions shall prejudice any other conditions or warranty (express or implied) to which the Seller may be entitled.

17. ARBITRATION

All disputes differences and questions which at any time arise between the Buyer and the Seller in relation to the Specification of the Goods shall be referred to a single arbitrator in accordance with the Arbitration Act 1950.

Signed:

Position:

Dated:

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