

Rectory Foods Limited
Conditions of Business

1. DEFINITIONS

In these Conditions the following words shall have the following meanings unless the context requires otherwise:

- 1.1 "the Company" shall mean the Rectory Foods Limited (Company Number 3002713) of: 22nd Floor, City Tower, Piccadilly Plaza, Manchester, Manchester, M1 4BT or any subsidiary or any subsidiary or associated company of the Company;
- 1.2 "Conditions" shall mean the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer;
- 1.3 "the Contract" shall mean the contract for the purchase and sale of the Goods;
- 1.4 "the Customer" shall mean any person firm company or organisation to whom the Company agrees to sell the Goods;
- 1.5 "the Goods" shall mean the goods (and any part thereof) the subject matter of the Contract as described in these Conditions;
- 1.6 "About to be shipped", "Immediate shipment", "Prompt shipment" or similar words shall indicate that shipment is to be effected in the case of goods being shipped from the Continent of Europe within fourteen days of Contract date and in the event of goods being shipped from elsewhere in the world it shall indicate that shipment is to be effected within one month of Contract date;
- 1.7 The date stated on the Bill of Lading or Transport Document shall be taken as the "Shipment Date";
- 1.8 "Writing" includes telex, cable, facsimile transmission and comparable means of communication.

2. BASIS OF SALE

- 2.1 The Company shall sell and the Customer shall buy the Goods in accordance with any quotation of the Company which is accepted by the Customer or any order of the Customer which is accepted by the Company subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer. No variation to these Conditions shall be binding on the Company unless the same shall have been expressly agreed to in writing by a director of the Company. No other servant or agent of the Company has any authority to alter or qualify these Conditions.
- 2.2 The Company reserves the right by giving notice in Writing to the Customer signed by a director of the Company to add to amend or vary these Conditions at any time before acceptance of delivery of or payment for the Goods whichever is the earlier.
- 2.3 Acceptance of delivery of the Goods or payment for the Goods by the Customer to the Company shall of itself constitute an acceptance of these Conditions where acceptance has not previously been communicated to the Company.
- 2.4 If any statement or representation has been made to the Customer by the Company its servants or agents upon which the Customer wishes to rely other than in the documents enclosed with the Company's quotations or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm, reject or clarify the point and submit a new quotation.
- 2.5 The Customer shall keep goods which are fresh at a temperature of between plus three and minus one degree centigrade and Goods which are frozen and are to be maintained frozen at temperature of not more than minus eighteen degrees centigrade at all times after delivery or collection as the case may be.
- 2.6 The Customer shall maintain suitable storage conditions and proper stock rotation shall be observed in the case of the goods which shall not be released for sale or distribution when by reason of their age or having regard to the time normally taken in the progress along the distribution chain they could not reasonably be expected to reach the ultimate customer in a fresh and wholesome state and prior to the expiry of their recommended shelf life.
- 2.7 Cancellations of Contract will only be agreed by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation including without limitation all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company. Notwithstanding such cancellation, all provision of goods or services by the Company prior to such cancellation continues to be subject to these conditions.

3. PRICE

- 3.1 The price of the Goods shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in any published price list of the Company for the Goods current at the date of acceptance of the order. Prices quoted are valid for the period stated at the time of the quote or until earlier acceptance by the Customer after which they may be altered by the Company without notice to the Customer.
- 3.2 All prices are exclusive of VAT which the Customer shall be liable to pay to the Company.
- 3.3 Unless otherwise agreed in Writing by the Customer and the Company all prices given by the Company are on an "ex works" basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 3.4 All pallets and crates are returnable and in the event of failure by the Customer to return them to the Company the cost of such items shall be charged to the Customer in addition to the price of Goods.
- 3.5 The Company may revise the price of the Goods at any time before delivery by giving notice in writing to the Customer to reflect any increase in the cost to the Company which is due to any of the following: war, foreign exchange fluctuations, currency regulation, change of fiscal policy, alterations of duties or wages or labour conditions or rates of insurance,

increase in the costs of labour or materials or other costs of manufacture, change in delivery dates or quantities or specification for the Goods requested by the Customer or delay caused by instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4. TERMS OF PAYMENT

4.1 The Company shall be entitled to submit its invoice to the Customer with its delivery advice note or at any time thereafter unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods in which case the Company shall be entitled to invoice the Customer at any time after it has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

4.2 Unless otherwise agreed by the Company in Writing payment for the Goods shall be made in full by the Customer without reduction in respect of any claim, counterclaim or set-off, and received by the Company within twenty-one days of the date of the Company's invoice and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and property in the Goods may not have passed to the Customer.

4.3 Time of payment shall be of the essence of the Contract.

4.4 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company of Company shall be entitled to:

4.4.1 cancel the Contract or suspend any further deliveries to the Customer.

4.4.2 appropriate any payment by the Customer to such of the Goods (or the goods supplied under any other contract between the Company and the Customer) as the Company may think fit notwithstanding any purported appropriation by the Customer; and

4.4.3 charge the Customer interest (both before and after judgement) on the amount unpaid at the rate of 4% per annum above the base lending rate of Lloyds Bank plc from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

5. DELIVERY AND LIABILITY

5.1 Delivery up of the Goods shall be made by the Company delivering the Goods to the Customer at such place as the Company may agree.

5.2 All delivery dates are estimates only and the Company shall not be liable for any delay in delivery howsoever caused. The time of delivery shall be of the essence of the Contract.

5.3 Should the Company be prevented from or hindered in delivering the Goods or any part thereof by reason of act of God, war, riot, explosion, fire, flood, strike, lock-out, industrial actions, acts or regulations of government, shortage of materials or labour, power failure, breakdown in vehicles or machinery or any other cause beyond the Company's control, the time for delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased.

5.4 Should the Company be prevented in delivering part of the Goods by reason of any of the factors specified in the preceding sub-clause the Company shall deliver and the Customer shall take and pay for such part of the Goods as the Company shall be able to deliver in accordance with these conditions.

5.5 The Company reserves the right to deliver the Goods by instalments and to tender a separate invoice in respect of each installment. Where the goods are delivered by instalments, the Contract shall become severable and each installment shall be deemed to be the subject of a separate contract. No default or failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as repudiated or to claim damages.

5.6 Where delivery of the Goods is to be made by the Company in bulk the Company reserves the right to deliver up to 5% more or 5% less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.

5.7 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy of the Company the Company may:

5.7.1 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

5.7.2 sell or otherwise dispose of the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

6. TITLE AND RISK

6.1 Property in the Goods shall not pass to the Customer until the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is due are fully paid for in cash or cleared funds but the risk in the Goods shall pass to the Customer in accordance with the provisions of the Incoterms ex-works provisions.

6.2 The Customer agrees that until property in the Goods passes to the Customer:

6.2.1 the Company shall be entitled (provided the Goods are still in existence and have not been re-sold) to require the Customer to deliver up the Goods to the Company and if the Customer fails do so forthwith the Company may enter upon the Customer's premises at any time and remove the Goods therefrom and

6.2.2 the Customer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and properly stored, protected and insured and identified as the Company's property.

7. WARRANTIES AND LIABILITY

7.1 Subject to the Conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery.

7.2 The above warranty is given by the Company subject to the following conditions:

7.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any specification of the Customer

7.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal conditions, failure to follow the Company's instructions (whether oral or in writing), failure to comply with good food hygiene rules, or any applicable UK statutory rules, regulations or codes of practice relating to food hygiene, misuse or alteration or repair of the Goods without the Company's approval.

7.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment.

7.2.4 the Company shall not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect in the quality or state of the Goods or after the Customer becomes aware of circumstances which should reasonably have indicated the existence of a defect.

7.3 Subject as expressly provided in these Conditions except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

7.5 Any claim by the Customer in respect of any shortage or defects in the quality or state of the Goods which would be apparent on visual and olfactory inspection shall be notified in Writing to the Company specifying the matters complained of within 24 hours of the time of delivery in the case of fresh Goods and within 7 days of the date of delivery in the case of frozen Goods. The Customer shall afford the Company a reasonable opportunity of inspecting the Goods before they are used, processed or sold.

7.6 Any claim by the Customer in respect of any shortage or defects in the quality or state of the Goods not apparent on visual or olfactory inspection shall be notified in Writing to the Company specifying the matters complained of as soon as reasonably practicable after discovery of such matters and in any event no later than 7 days after the date of delivery of the Goods. The Customer shall immediately after discovery of such matter cease to make any use of the Goods and shall afford the Company a reasonable opportunity to inspect the Goods .

7.7 Without prejudice to paragraphs 7.5 to 7.6 of this Condition any claim by the Customer in respect of discrepancies in weight shall be notified in Writing to the Company within one day of delivery of the Goods. The Customer shall afford the Company a reasonable opportunity of witnessing a re-weigh thereof the Goods have been used processed or sold.

7.8 Claims for loss or damage in transit cannot be considered unless notified in Writing to the Company's carriers and the Company within three days of delivery. Notifications should give delivery note number, list the Goods damaged or short, and detail the damage. Damaged Goods accepted by the Customer should be retained for inspection by the Company. In cases of non-delivery of a consignment, claims cannot be considered unless notified in Writing to the Company's carriers and the Company within forty-eight hours of due delivery date. Liability shall be limited to replacement of Goods actually damaged or lost in transit.

7.9 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 specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or proportionate part of the price), but the Company shall have no further liability to the Customer.

7.10 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit, indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

7.11 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

7.11.1 Act of God, explosion, flood, tempest, fire or accident;

7.11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

7.11.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

7.11.4 import or export regulations or embargoes;

7.11.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

7.11.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

7.11.7 power failure or breakdown in machinery. 7.12.1 The Company shall not be liable in respect of any claim brought by the customer unless written notice is given by the Customer to the Company of any claim within 7 days of the date when the Customer should reasonably have become aware of the circumstances giving rise to the claim. 7.12.2 In any event, the Company shall be discharged from all liability to the Customer howsoever arising and whether or not in respect of negligence of the Company unless proceedings (whether or not by way of counterclaim) are properly served upon the Company within 3 months of the event giving rise to the Customer's claim.

8. INSOLVENCY

If the Customer shall (being an individual or firm) become bankrupt or (being a company) become unable to pay its debts as defined by Section 123 Insolvency Act 1986 or become subject to administration proceedings or go into liquidation (other than for a voluntary winding up for the purpose of reconstruction amalgamation) or if a Receiver, Manager, Administrator or Administrative Receiver is appointed of all or any part of its assets or undertakings or the Customer makes a voluntary arrangement with its creditors or ceases or threatens to cease to carry on business the Company shall be entitled to cancel the Contract in whole or in part by notice in Writing to the Customer without any liability to the Customer and without prejudice to any right or remedy accrued or accruing to the Company and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

9. INCOTERMS AND EXPORT TERMS

9.1 In these Conditions "Incoterms" means the international rules for interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

9.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 9 shall (subject to any special terms agreed in Writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.

9.3 The Customer shall be responsible for ensuring that any goods purchased from the Company comply with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

9.4 Unless otherwise agreed in Writing between the Customer and the Company, the Goods shall be delivered Ex-works. Insofar as the Company is requested to arrange transportation for any part of the movement of the goods to the Customer, the Company does so as agent for the Customer and shall be entitled to do so upon such terms as are reasonable and shall be entitled to charge a reasonable mark-up on the basic transportation cost and shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

9.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

9.6 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company or, if the Company has agreed in writing on or before acceptable of the Customer's order acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer's payable 60 days after sight to the order of the Company at such Bank in England as may be specified in the bill of exchange and acceptable to the Company.

10. GENERAL

10.1 The Customer shall not make any promises, representations, warranties or guarantees with reference to the Goods except such as are consistent with these terms and conditions.

10.2 No failure to delay on the part of the Company to exercise any of its rights under the contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Customer of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

10.3 Any liability of the Company under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under these Conditions. The Customer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever and howsoever arising or arisen which otherwise be available to it.

10.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

10.5 The Contract Shall be governed by an construed in accordance with English law, and the Company and the Customer agree to submit to the exclusive jurisdiction of the English Courts.

10.6 Any notice required or permitted to be given by either party to the order under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.7 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 provisions in question shall not be affected.

PURCHASE CONDITION

The Supplier to the Company of any Food Products shall ensure that: i any such food products supplied to the Company for the purpose of human consumption do not present a hazard to human health ii any food products supplied comply with the Food Safety Act 1990 as amended supplemented re-enacted or replaced and all other relevant or subordinate UK legislation dealing with food safety and related matters iii any food products supplied are packaged and labelled in accordance with all current UK rules and regulations (statutory or otherwise) relating to the labelling and packaging of food products.