

**SPECIALISED FOOD INGREDIENTS LIMITED
TERMS AND CONDITIONS OF SALE**

1. INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings:
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| “the Buyer” | the person(s), firm or company who purchases the Goods from the Company; |
| “the Company” | Specialised Food Ingredients Limited; |
| “Contract” | any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; |
| “Delivery” | the place and time of delivery or deemed delivery of the Goods in accordance with clause 4 (and “Deliver” and “Delivered” shall be construed accordingly); |
| “Delivery Notes” | the delivery notes accompanying the Goods on Delivery; |
| “Goods” | any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); |
| “Specifications” | the technical specifications relating to the Goods which shall be annexed to and form part of the Contract. |

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will 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 upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will 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.

2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase 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 or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no contract will 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

Save as set out in the Specifications, all drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4. DELIVERY

4.1 Subject to clause 4.5, where the Contract states that:

4.1.1 the Company is to deliver or arrange delivery of the Goods to the Buyer's premises, Delivery shall take place at the Buyer's premises on such date as may be specified in the Contract or as may be notified by the Company;

4.1.2 the Buyer is to take delivery of the Goods from the Company's nominated warehouse, Delivery shall take place at that warehouse on such date as may be specified in the Contract or as may be notified by the Company.

4.2 Any dates for Delivery specified in the Contract shall be approximate only and the Company shall not be liable for any delay in Delivery howsoever caused. Time for Delivery shall not be of the essence unless otherwise agreed in writing.

4.3 Where the Goods are to be Delivered to the Buyer's premises, if the carrier delivering the Goods is detained for any reason at the Buyer's premises beyond the unloading period specified by the said carrier or the Company (as the case may be), the Buyer shall be liable for appropriate demurrage charges.

4.4 The Buyer shall (so far as is practicable) inspect the containers containing the Goods and the Goods themselves at Delivery and shall endorse the Delivery Notes with appropriate comments if they are found to be damaged, if they do not conform with the Specifications or the number ordered or if the seals affixed to the containers are not intact. If the Delivery Notes are not so endorsed, the Company shall not be liable in respect of any matter which should have been discovered upon such inspection.

4.5 If for any reason the Buyer will not accept Delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.5.1 the Goods will be deemed to have been Delivered; and

4.5.2 the Company may store the Goods until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

4.6 The Buyer will provide at its expense at the place of Delivery adequate and appropriate equipment and manual labour for unloading or loading (as appropriate) the Goods.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity ordered the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the *pro rata* Contract rate.

5. NON-DELIVERY

5.1 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within [3] days of the date when the Goods would in the ordinary course of events have been Delivered.

5.2 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:

6.2.1 the Goods; and

6.2.2 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 must:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition 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; and

6.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

6.5.1 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 Act 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 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

6.5.2 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/performs 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

6.5.3 the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Company.

6.7 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.

7. PRICE

7.1 The price for the Goods shall be the price set out in the Contract.

7.2 The price for the Goods shall be exclusive of any value added tax and all increases between the date of the Contract and the date of delivery or deemed delivery of the Goods in import/export taxes, duties and levies, port landing and handling charges and freight costs all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

8. PAYMENT

8.1 Payment of the price for the Goods is due within 30 days of the invoice date unless otherwise agreed in writing between the parties.

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 in Pounds Sterling.

8.4 The Buyer shall make all payments due under the Contract 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.

8.5 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Company may:

8.5.1 charge the Buyer with interest on such sum from the due date for payment at the annual rate of 2% 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 judgement; and/or

8.5.2 suspend outstanding deliveries and cancel any unexecuted balance of the Contract and any other contracts between the Company and the Buyer; and

8.5.3 request security to be provided by the Buyer in a form satisfactory to the Company in respect of the Buyer's obligations under the Contract before deliveries are resumed.

9. QUALITY

9.1 The Company warrants that (subject to the other provisions of these Conditions) upon Delivery the Goods be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and shall comply with all relevant UK and EU legislation relating to the supply and sale of food at the date of the Contract.

9.2 The Company shall not be liable for a breach of the warranty in condition 9.1 unless:

9.2.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 48 hours of the time when the Buyer discovers or ought to have discovered the defect; and

9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

9.3 The Company shall not be liable for a breach of the warranty in condition 9.1 if:

9.3.1 the Buyer makes any further use of such Goods after giving such notice; or

9.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if

there are none) good trade practice; or

9.3.3 the Buyer alters or repairs such Goods without the written consent of the Company.

9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall at its option 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, at the Buyer's

expense, return the Goods or the part of such Goods which is defective to the Company.

9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1 Subject to 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:

10.1.1 any breach of these Conditions; and

10.1.2 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 for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price for the relevant Goods; and

10.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. AMENDMENT/CANCELLATION

The Company is not obliged to accept an amendment or cancellation of the Contract but if it does accept such an amendment or cancellation the Buyer shall be liable for an appropriate administration charge as well as any loss in profit and other costs incurred by the Company as a result of such amendment or cancellation.

12. CONFIDENTIALITY

Each of the Company and the Buyer hereby undertakes to the other that it shall not at any time use or disclose to any person other than such person whose province it is to know the same any confidential information concerning the business, contractual arrangements, customers, suppliers or other dealings, transactions or affairs of the other which may come to its knowledge and it shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

12. ASSIGNMENT

12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

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, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (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 [28] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. GENERAL

14.1 It is not intended for any rights to be conferred on any Third Parties under the Contract under the Contracts (Rights of Third Parties) Act 1999.

14.2 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.

14.3 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.

14.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.6 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to the recipient's registered office or such address as shall be notified by one party to the other from time to time. Communications shall be deemed to have been received, if sent by pre-paid first class post, 2 working days after posting (exclusive of the day of posting), if delivered by hand, on the day of delivery, and if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.7 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.