

THE FOODFELLAS LTD

TERMS & CONDITIONS OF SALE

1. Definitions

- 1.1 In these Terms & Conditions of Sale The FoodFellas Ltd is referred to as the 'Seller' and the person, company person, firm or company placing the order as the 'Buyer'.
- 1.2 'Goods' means the goods (including any instalment or part load of goods) which the Seller is to supply in accordance with these Conditions.
- 1.3 'Contract' means a contract for the sale and purchase of the Goods.
- 1.4 'Conditions' means these Terms & Conditions of Sale.

2. Basis of Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2 All prices quoted by the Seller are based on these conditions which incorporate, amongst other things, limitations upon the seller's liability.
- 2.3 Should any Buyer wish to contract with the Seller otherwise than on these Conditions or upon the basis of amendments to them or deviations from them, special arrangements must be agreed in writing prior to sale.
- 2.4 All brochures, catalogues, price lists, samples and other advertising or descriptive material submitted to the Buyer by the Seller are intended to be approximate only and to give a general impression of the goods. Unless expressly incorporated the same shall not form part of the Contract.

3. Price

- 3.1 The price of the Goods shall be the sellers quoted price or, where no price has been quoted (or a quoted price is no longer valid) the seller's current standard price at the date of acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 3.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the reasonable control of the Seller (such as, without limitation, any market fluctuation, currency regulation, alteration of duties or significant increase in the cost of raw materials), any change in delivery dates, quantities or specifications requested by the Buyer, or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 3.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, all prices given by the Seller include the cost of delivery of the Goods within the UK mainland.
- 3.4 Unless otherwise specified, the price is exclusive of VAT and any other applicable tax or duties, which the Buyer shall be additionally liable to pay the Seller.

4. Payment Increases

- 4.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.
- 4.2 The Buyer shall pay the price of the Goods within the time period agreed between the Buyer and the Seller, notwithstanding that delivery may not have taken place and property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 4.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy of the Seller, the Seller shall be entitled to
 - 4.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 4.3.2 appropriate any payment made by the Buyer to such of the Goods (or any other Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
 - 4.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the maximum rate permissible by law from time to time, until payment in full is made;
 - 4.3.4 claim fixed sum compensation from the Buyer as permitted by law to cover the Seller's credit control overhead costs; and
 - 4.3.5 recover (under Condition 4.4) the cost of taking legal action to make the Seller pay.
- 4.4 The Buyer shall indemnify the Seller in full and hold it harmless from all expenses and liabilities the Seller may incur (directly or indirectly including financing costs, legal costs on a full indemnity basis and the cost of instructing a debt recovery agency to recover a debt due to the Seller if any) following any breach by the Buyer of any of the Buyer's obligations under any Contract.

5. Delivery

- 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods from the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused, time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 5.3 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 the Contract or any claims 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.
- 5.4 If the seller fails to deliver the Goods within a reasonable period of the quoted delivery date, for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) at the price paid by the Buyer (in the cheapest available market) in purchasing similar goods to replace those not delivered, over the price of the Goods.
- 5.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (other 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 right or remedy available to the seller, the seller may:

- 5.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.5.2 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 Contract price.

6. Risk and Property

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7. Retention of Title

- 7.1 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 under any other contracts for which payment is then due).
- 7.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from any other Goods belonging to the Buyer or any third party 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 moneys or property of the Buyer and third parties and, in the case of tangible proceeds, property stored, protected and insured.
- 7.3 Until such time as the property in the Goods passes to the Buyer (and 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 repossess the Goods.
- 7.4 Notwithstanding this Condition 7, the Seller shall be entitled to maintain an action for the price of the Goods at any time after the date when payment is due.

8. Limitation of Liability

- 8.1 Save as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 The Seller shall have no liability in respect of any defect in the quality, condition or fitness of the Goods or their failure to correspond with specification unless, time being of the essence for the purpose of this condition:
 - 8.2.1 (save as provided in Condition 8.3) notification of rejection, claim or complaint is made in writing to the Seller giving the grounds for such rejection, claim or complaint immediately upon discovery and in any event within 48 hours of delivery; and
 - 8.2.2 the Seller is given an opportunity to inspect the Goods at a reasonable time during normal business hours ; and
 - 8.2.3 the Goods are properly stored at the appropriate temperature for the type of Goods concerned (frozen Goods to be stored at a temperature not exceeding minus 18c) pending resolution of the claim; and
 - 8.2.4 the Goods can clearly be identified as being those supplied by the Seller.
- 8.3 If the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the time specified in Condition 8.2.1 and notice was given within a reasonable period, the Seller shall not be entitled to rely upon the time limits stipulated.
- 8.4 Where a valid claim is notified to the Seller in accordance with these conditions, the Seller shall either, at his sole discretion, replace the Goods, which are the subject of the claim or refund to the Buyer the price of the Goods
- 8.5 Except as provided in Condition 8.6 below, the Seller shall not be liable to the Buyer 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 consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the sale of the Goods and the entire liability of the Seller under or in connection with the Contract shall not exceed the Contract price for the Goods.
- 8.6 The Seller accepts liability for death and personal injury to the extent caused by the negligence of the Seller, its employees and agents (during the course of their employment and agency, as appropriate)

9. Termination

- 9.1 Either party may terminate this Contract forthwith by notice in writing to the other if:
 - 9.1.1 the other party commits a breach of this contract which is either incapable of remedy or, in the case of a breach capable of remedy, shall not have been remedied within 30 days of the receipt by the other of a notice identifying the breach and requiring its remedy;
 - 9.1.2 the other party makes any voluntary arrangement with its creditor or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation;
 - 9.1.3 a receiver is appointed or an encumbrance takes possession of any of the property or assets of the other party
 - 9.1.4 the other party ceases, or threatens to cease, to carry on business
 - 9.1.5 it reasonably believes that any of the events mentioned above is about to incur in relation to the other party and notifies the other party accordingly.
- 9.2 In the event that this Contract is terminated by either party in accordance with clause 9.1, payment for the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

10. Force Majeure

- 10.1 Neither party shall be regarded as being in breach or be liable to the other for any loss, damage or injury caused to the other party as a direct or indirect result of the performance of any obligation under these Conditions being prevented, hindered or delayed by any events or circumstances beyond the reasonable control of the party affected including, but not limited to; fire, flood, storm, Act of God, pandemic, epidemic, war, riot, trade dispute, materially adverse weather or ground conditions or unforeseen seed or crop failure or disease.

11. General

- 11.1 All notices under these conditions shall be in writing. Notices may be given by fax, e-mail, first class post or personal delivery.
- 11.2 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any condition is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other Conditions and the remainder of the Condition in question shall not be affected.

11.4 The Contract shall be governed by English law and be subject to the sole jurisdiction of the English Courts.

12. Anti-bribery and Corruption

12.1 The Buyer shall (i) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010, (ii) not bribe, promise or give financial advantage to another person (including a Foreign Public Official) whether directly or indirectly and must not receive any bribe, promise or other financial advantage from a third party which in each case may be designed or intended to induce or reward the improper performance of a function or activity, (iii) promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of any Contract and, at the Seller's request, confirm in writing that the Buyer has complied with this Condition 12 and provide such supporting evidence of compliance as the Seller may reasonably request.

12.2 Breach of this Condition 12 shall be treated as a material breach of the Contract.

13. Data Protection

13.1 Both parties will comply with all applicable requirements of the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018 ("**Data Protection Legislation**").

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Seller is the Processor (as defined in the Data Protection Legislation) in relation to the personal information required on the Seller's Credit Account Application Form overleaf ("**Personal Data**").

13.3 The Seller shall be entitled to process the Personal Data for the purposes of the supply of Goods under any Contract and for the purposes of setting up an account with the Buyer.

13.4 The Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Seller.

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