

Web Ordering Terms

1 Definitions

- 1.1 "Buyer" means the person who buys or agrees to buy the goods from the Seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Delivery Date" means the approximate date specified by the Seller when the goods are to be delivered.
- 1.4 "Goods" means the goods which the Buyer agrees to buy from the Seller.
- 1.5 "Price" means the Price for the Goods including carriage.
- 1.6 "Seller" means Henderson Foodservice Ltd., P.O. Box 49, Hightown Avenue, Newtownabbey, Co. Antrim and any subsidiaries and related companies of Henderson Foodservice Ltd.
- 1.7 "PLOF" means the Seller's Price List Order Form as published by the seller from time to time.

2 Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. An offer shall be made by the Buyer by telephone or by another method approved by the Seller.
- 2.3 Acceptance of the Buyer's order shall be the delivery of the Goods to the Buyer which shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 The Seller is under no obligation to accept an order or generally to supply Goods to the Buyer.

2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless issued in writing by the Seller.

3 The Price and Payment

3.1 The price of the Goods shall be the Seller's price ruling at the date of assembly of the Buyer's order at the Seller's premises. The Price is exclusive of VAT which shall be due by the Buyer at the rate ruling on the date of VAT Invoice.

3.2 Payment of the Price and VAT shall be due within the credit period notified to the Buyer by the Seller from time to time in writing or in default thereof 7 days of the date of the invoice. Time for payment shall be of the essence.

3.3 Interest on overdue invoices shall accrue from the date of delivery and continue from day to day until the date of payment at the rate of 4% above the Seller banker's base rate from time to time in force in Belfast and shall accrue at such a rate after as well as before any judgement.

3.4 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under these Conditions shall prejudice its right to do so in the future.

3.5 Without prejudice to the Seller's other remedies if any payment by the Buyer is overdue then all sums whatever (whether pursuant to these Conditions or otherwise) due from the Buyer to the Seller shall become immediately due and the Buyer shall not have the benefit of the credit period specified in clause 3.2 or any other relevant credit period and furthermore the Seller shall be at liberty to exercise any of its rights pursuant to clause 9.

3.6 If the Buyer fails to make any payment to the Seller on the due date then without prejudice to the Seller's other remedies the Seller may appropriate any payment made by the Buyer to such of the Goods as the Seller may in its absolute discretion think fit.

3.7 Should the Buyer default in payment of any sum for whatever reason on the due date, then, without prejudice to any other right which the Seller may have, the Seller may withhold or suspend performance of any contractual obligation to the Buyer notwithstanding anything to the contrary herein contained.

4 Limitation of Authority

4.1 The Sellers servants and agents have no authority orally to vary, modify or waive expressly or impliedly any of these conditions whatsoever or to make any oral or written representation as to their effect save that an Officer of the Company duly and expressly authorised may vary in writing any terms contained herein.

4.2 The Buyer on accepting a quotation by the Seller and/or in entering into a contract with the Company on the basis of these conditions is deemed to have acknowledged that he has received and/or relied on:-

(i) No oral representation which might have the effect of over-riding the said conditions.

(ii) No oral advice as to the suitability of Goods supplied by the Seller for any particular situation or purpose.

4.3 Quotations by the Seller shall not constitute offers by the Seller to supply the goods or carry out work referred to therein, and no order placed in response to a quotation will be binding unless accepted by the Seller in writing. All such acceptances by the Seller are subject to availability of the necessary materials and to the Seller being able to obtain any necessary authorisation and/or licences and to the same remaining valid.

5 The Goods

5.1 The Goods shall be supplied in accordance with the description contained in the Seller's PLOF.

5.2 The quantity of the Goods shall be set out in the Seller's delivery advice.

5.3 The Seller shall be entitled to substitute Goods in the same description (but different brand name) in place of those ordered. The Buyer may reject same provided that it notified the Seller in writing of its rejection within 48 hours of delivery and makes such Goods available for collection by the Seller. In default thereof the Buyer shall be deemed to have accepted same.

5.4 No right or licence is granted under any supply of Goods to the Buyer under any form of intellectual property except the right to resell the Goods.

5.5 If the Seller is, for any reason, unable to supply the Goods the Buyer's order in respect of such Goods shall be deemed cancelled.

6 Warranties and liability

Save for such warranties as are implied by law no warranty, condition, description or representation is given or implied by the Seller.

7 Delivery of the Goods

Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, including the provision of secure and hygienic indoor storage and chilled and cold store facilities where necessary or desirable.

8 Cancellations

The Seller may refuse an order at any time before the Goods are delivered. The Seller shall not be liable for any loss or damage whatever arising from such refusal.

9 Acceptance of the Goods

9.1 The Buyer shall be deemed to have accepted Goods on delivery to the Buyer unless the Buyer notifies the Seller in writing within 48 hours of delivery that Goods were delivered which were not in conformity with the Buyers order or are damaged or otherwise not fit for resale. Such Goods shall be set aside and kept safe by the Buyer and made available for inspection by the Seller. If the Seller accepts that such Goods are not in conformity with order or are damaged or unfit for resale it shall allow the Buyer a credit in respect of such Goods.

9.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

10 Title and risk

10.1 The risk in the Goods shall pass to the Customer:-

10.1.1 Where the Seller delivers Goods or causes Goods to be delivered, then as and from the arrival at the point where they are to be unloaded;

10.1.2 Where the Buyer collects Goods or causes Goods to be collected then as and from the point where they are collected. When Goods are loaded on to vehicles, loading shall be the responsibility of and at the risk of the Buyer.

10.2 Notwithstanding delivery having been made property in the Goods shall not pass from the Seller, (and shall remain with the Seller) until:

10.2.1 The Buyer shall have paid the Price plus VAT (if any) in full and

10.2.2 No other sums whatever (whether pursuant to a supply under these Conditions or otherwise) shall be due from the Buyer to the Seller; and until then the Seller or its agents are deemed to have the right given by the Buyer to have his irrevocable authority to enter on to the Buyer's premises to recover any goods and dispose of them at its discretion without being liable to the Buyer for any disturbance, damage or loss caused by the exercise of such rights. Until property in the Goods passes to the Buyer in accordance with this clause he shall hold them on a fiduciary basis as bailee for the Seller and shall store the Goods at no cost to the Seller.

10.3 The Seller shall be entitled to recover all sums due from the Buyer to the Seller notwithstanding that the property in any Goods has not passed to the Buyer.

10.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell them in the ordinary course of the Buyer's business at full market value but for the account of the Seller.

10.5 Risk shall pass on delivery of the Goods to the Buyer who shall insure them to their full value against all risks to the reasonable satisfaction of the Company until the date property in them passes to the Buyer. The Buyer shall provide proof of such insurance and the payments of premiums to the Seller on demand and in default thereof all sums due by the Buyer to the Seller shall become immediately due and payable.

10.6 The Buyer shall not pledge or in any way charge or give security over the Goods in respect of any indebtedness or liability of the Buyer whilst they remain the property of the Seller. Without prejudice to the other rights of the Seller if the Buyer is in breach of this clause all sums whatever (whether pursuant to a supply under these Conditions or otherwise) owing to the Seller shall become immediately due and payable.

11 Remedies of the Buyer

11.1 Where the Buyer properly rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods that conform to the contract of sale.

11.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

11.3 The Seller shall not be liable to the Buyer for late or non-delivery or short delivery of the Goods.

11.4 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counter-claim which the Buyer may have or for any reason whatever.

12 Force Majeure

The Seller shall not be liable for the failure to perform any or all of its obligations under these Conditions arising from any inability to procure or secure at reasonable costs labour, materials, goods or other supplies of any kind or any Act of God, war, strike, lock-out or other labour dispute, civil commotion, fire, flood, drought, equipment failure, legislation, order of any public or competent authority or any other cause beyond its control.

13 Limitation and Exclusion of Liability

13.1 The liability of the Seller in respect of any Goods proven to be defective shall where the law so permits be limited to the Wholesale price of the Goods in question.

13.2 The Seller shall not be liable for any direct or indirect consequential economic loss or loss of profit in respect of these Conditions.

14 Insolvency

14.1 If the Buyer is in breach of the Conditions or if any seizure or execution shall be levied upon any of the Buyer's Goods or if the Buyer offers to make any arrangement with its creditors or the Buyer is unable to pay its debts as they fall due or if any resolution or petition to bankrupt/wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, supervisor, trustee, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have;

14.1.1 Suspend all future deliveries of Goods to the Buyer and/or terminate the Conditions without liability upon its part; and/or

14.1.2 Exercise any of its rights pursuant to Clause 9.

15 Transfer of Rights

15.1 These Conditions and any orders accepted thereunder are personal to the Buyer and may not be assigned either at law or in equity or dealt with in any way by the Buyer.

15.2 The Seller may licence, authorise or sub-contract all or any part of its rights and obligations under the Conditions or any order accepted thereunder without the Buyer's consent but without relieving the seller of its obligations and liabilities to the Buyer.

16 Headings

All Headings are for ease of reference only and shall not affect the construction of these terms and conditions.

17 Severance

Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.

18 Proper law of Contract

This contract is subject to the law of Northern Ireland and the jurisdiction of the courts of Northern Ireland.