

# TERMS AND CONDITIONS OF SALE

## 1. GENERAL

- 1.1 These Conditions constitute the only conditions on which the meats divisions of Cargill Meats B.V., with its registered office in Amstelveen, the Netherlands (33274884), Cargill Integra Holland B.V., with its registered office in Denekamp, the Netherlands (06047613), Cargill Integra Ireland Limited, with its registered office in Dublin, Ireland (355176) and the Cargill Integra UK business of Sun Valley Foods Limited, with its registered office in Hereford, England (company number 678294) (each hereafter referred to as the "Company") are willing to supply goods ("Goods") and provide Services ("Services") to its customers (hereafter a "Customer"). For the purposes of these Conditions a "Contract" shall mean an agreement between the Company and the Customer for the sale and purchase of Goods or Services.
- 1.2 These Conditions shall prevail over any terms and conditions that the Customer purports to apply under any document issued by the Customer.
- 1.3 In the event that Goods are specified to be sold on the basis of a trade term defined in Incoterms 2000 (as amended from time to time) (an "Incoterm"), such Incoterm shall prevail.
- 1.4 Any variations to or waiver of these Conditions or any additional representation or warranty given in relation to Goods or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 1.5 The Customer agrees that the Company may, at its sole discretion, sub-contract the manufacture, supply and/or delivery of the Goods or Services to any affiliated company of the Company or other third party. The Customer shall not be entitled to assign or sub-contract any Contract (or part of it).
- 1.6 Each order placed by a Customer for the supply of Goods or Services (hereafter an "Order") shall be deemed to be an offer by the Customer to purchase Goods or Services on these Conditions, which is subject to acceptance by the Company. Following such acceptance, no Order or Contract may be cancelled without the consent of the Company to be given in its absolute discretion and subject to conditions as it thinks fit.
- 1.7 If any provision of these Conditions is found to be wholly or partly illegal, void or unenforceable it shall, to the extent necessary, be deemed to be severed and the remaining provisions shall continue in full force and effect.
- 1.8 These Conditions and any Contracts are governed by the laws of the jurisdiction of registration of the relevant Company and the courts of such jurisdiction shall have exclusive jurisdiction to decide on any disputes arising out of or in connection herewith.

## 1. CONDITIONALITY AND TERMINATION

- 2.1 Any Contract for the sale of Goods is conditional upon: (i) the Company obtaining sufficient import licenses under the EU Quota System to allow the import into the EU of Goods to satisfy all customer orders for Goods in full; (ii) the Company's suppliers being able to export such quantities of Goods to the EU under the EU Quota System or pursuant to the national rules, regulations and practices in force in the countries of export; and (iii) supplies of such Goods being made to the Company at the agreed price by the supplier with whom the corresponding supply contract has been made or replacement Goods being available to the Company at no greater cost than that charged in such supply contract.
- 2.2 All Contracts are conditional upon satisfactory results of credit checks on the Customer. In addition each delivery of Goods and Services is conditional on the creditworthiness of the Customer remaining satisfactory. The Company may suspend or terminate the Contract without liability in the event that, in its reasonable opinion, the Customer's creditworthiness is adversely affected or the Customer ceases to trade, fails to make any payment when due or any procedure or step is taken in relation to, or with a view to, the Customer entering into insolvency proceedings.
- 2.3 The Company shall have no liability for any failure to fulfill any order or Contract, wholly or in part, as a result of the conditions in 2.1 and 2.2 above not being satisfied.
- 2.4 The Company reserves the right to increase the agreed prices of the Goods or Services or reduce its supply commitments in terms of volume agreed between the Customer and the Company, whether in relation to a single Contract or a number of Contracts, as necessary to take account of any increase in cost to the Company due to (i) any change in law, regulation, tax, duty, levy or other payment imposed upon the Goods and/ or Services after the date of the Contract by the European Union or other national government; or (ii) circumstances of hardship or significant increases in prices, or reductions in availability of, raw materials, energy, services or other supplies required by the Company, on giving the Customer one month's prior notice together with an explanation of the reason for such changes. The Company also reserves the right to terminate, without liability, any Contract the performance of which, as a result of any such change, will have a material adverse effect on the Company, which cannot be resolved by an increase in the price.
- 2.5 Where the Customer requests the Company to produce or procure Customer specific packaging materials for use in relation to the Goods then, in the event of the termination of the Contract (howsoever arising), the Customer agrees to indemnify the Company for the full costs to the Company of all packaging materials which have been produced or procured by the Company on behalf of the Customer but which remain unused as at the date of termination.
- 2.6 For all sales of salted chicken products under the EU Quota System (other than those sold under a DDP or FCA Customs Cleared basis as defined in the current version of the Incoterms), the Customer agrees that Cargill shall not be liable to the Customer for more than 50% of the difference between Customs Duty actually paid and a Customs Duty calculated on the CIF value of the Goods at the preferential duty rate. This shall not in any way derogate from the Customer's liability or responsibility for the payment of import duties and customs clearance.

## 3. PRICES AND PAYMENT

- 3.1 Prices quoted by the Company (whether verbally or in writing) shall not be deemed to be offers capable of acceptance and may be withdrawn by the Company at any time prior to a Contract being entered into. The price payable for the Goods or Services shall be as agreed between the Customer and the Company in the Contract and, unless otherwise agreed, is exclusive of VAT, costs of carriage, customs, excise and other duties payable.
- 3.2 Payment by the Customer is due in cleared funds within 14 days of the invoice date, save where alternative payment terms have previously been agreed in writing between the parties. The Company may amend the payment terms applicable to the Customer on notice to the Customer in the event the Company has concerns over the Customer's creditworthiness. Payment will be made in full without deduction or delay by way of any set-off or counterclaim. Time for payment on the due date shall be of the essence and statutory interest will be incurred if payment does not occur on or before the due date.

## 4. DELIVERY

- 4.1 If an Incoterm applies, delivery will take place in accordance with such term. Unless otherwise agreed, delivery of Goods and performance of Services shall take place at the Company's place of business or its nominated third party store. Delivery of Goods shall occur when the Goods are loaded onto the vehicle of the Customer or its agent. It shall be the Customer's responsibility to ensure that the delivery vehicle is clean, sound, fit for purpose and is set to carry the Goods at the appropriate temperature.
- 4.2 If it is agreed that delivery shall take place otherwise than at the Company's place of business, delivery of Goods shall occur when the Goods are unloaded at the Customer's premises or nominated third party store. The Customer shall supervise the unloading process and shall provide adequate staff, equipment, instructions and assistance to enable the Goods to be offloaded.

- 4.3 The Company and the Customer may agree, or the Customer may request, a date or time for delivery of the Goods or Services but any such dates/times are intended to be estimates and time shall not be the essence of the Contract or made so by notice. The Company shall use its reasonable endeavours to comply with any date or time agreed for delivery but, subject to the other provisions of these Conditions, the Company will not be liable for any loss, damages, charges or expenses caused by any delay in the delivery of the Goods or Services, nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days. The Company's liability for failure to deliver shall be limited to the excess (if any) over the price of the relevant Goods or Services of the price of replacement Goods or Services to the Customer, in the cheapest available market.
- 4.4 The Customer undertakes to collect or take delivery of the Goods or Services at the agreed time/date or evenly during the agreed period and agrees to indemnify the Company against any costs or losses incurred by the Company as a result of any failure to do so or any inability of the Company to deliver caused by the Customer (including, without limitation, additional delivery costs and demurrage and storage costs), other than where such failure arises as a result of the default of the Company. In such circumstances the Company may terminate the Contract, without liability, and sell the Goods and charge the Customer for any shortfall below the Contract price.

## 5. RISKS AND TITLE

- 5.1 The Goods are at the risk of the Customer from the time of delivery or, if the Customer fails to take delivery pursuant to Condition 4.5, at the originally agreed delivery time.
- 5.2 The Company shall remain the sole and absolute owner of the Goods until such time as the price of the Goods and all other monies which are or which become due to the Company from the Customer have been paid to the Company by the Customer in cleared funds and, until such time, the Goods shall be properly and separately stored by the Customer. The Company shall have the right to enter the Customer's premises to enforce its retention of title at any time and remove the Goods.

## 6. INSPECTION

- 6.1 The Customer must carefully examine all Goods or the results of all Services upon delivery. Any defects discovered as a result of such inspection must be notified within 2 business days of delivery and, in the absence of such notification; the Company shall have no liability for defects reasonably discoverable upon careful examination. In the event a defect is discovered for which the Company is responsible the Customer shall not sell, use or mix the Goods following such discovery. If the Customer establishes that a defect exists the Customer's sole remedy shall be as set out in Condition 7.2.

## 7. QUALITIES AND QUANTITY

- 7.1 The Company warrants that (subject to the other provisions of these Conditions), upon delivery the Goods will (i) comply in all material respects with the specification for the Goods agreed in writing and signed by the Company and the Customer or, in the absence of an agreed specification, the specification for the Goods provided to the Customer by the Company (which may be in the form of a Product Data Sheet), subject to tolerances set out in the such specification; and (ii) be of satisfactory quality. The Company warrants that the Services will be performed with reasonable care and skill. All other warranties, terms and conditions, express or implied by statute or otherwise are hereby excluded to the fullest extent permissible by law.
- 7.2 In the event that the Goods or Services do not comply with the express terms of the Contract or there is a breach of these warranties then the Company shall, at its option, either replace the defective Goods or Services or refund up to the maximum of the total payments made by the Customer to the Company under the Contract in respect of the defective Goods or Services. Any such refund or replacement is conditional upon the original Goods being returned to the Company. The Company has the right to demand samples of any Goods and/or Services in relation to which the Customer makes a quality claim.
- 7.3 The quantity recorded by the Company upon dispatch shall be decisive. Delivery of a shortage or surplus not exceeding 5% of the quantity or weight of the Goods ordered shall, at the Company's option, be considered to be due execution of the Contract and the Customer shall not be entitled to object to or reject the Goods by reason of such surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

## 8. LIMITATION OF LIABILITY

- 8.1 The Company shall not be liable for a breach of these Conditions or any defects in the Goods or Services unless (i) the Customer gives written notice of a defect to the Company within 2 business days of the time when the Customer discovers or, if earlier, ought to have discovered the defect, subject to Condition 6.1; (ii) the Company has been given a reasonable opportunity after receiving the notice of examining such Goods or Services; (iii) the Customer notifies the Company in writing of a claim within 90 days of delivery of the Goods or Services; and (iv) legal proceedings are initiated within 6 months of delivery of the Goods or Services.
- 8.2 The Company shall have no liability for any loss or damage arising as a result of the Customer's breach of its obligations in these Conditions. The Customer shall be deemed to have full knowledge of the nature of the Goods or Services and the Company shall not be liable for any loss or damage arising from the storage, handling, mixing, processing or use of the Goods or the results of the Services following delivery or from wilful damage, negligence or abnormal working conditions.
- 8.3 The Company shall have no liability to the Customer, whether in contract, tort or otherwise, for any losses, costs or expenses arising from the Goods or the customs clearance of such Goods being delayed as a result of any delays, errors or omissions of the institution responsible for issuing Certificates of Origin in relation to the Goods.
- 8.4 The Company's aggregate liability for breach (or series of related breaches) of these Conditions or the Contract or in relation to the Goods or Services, whether in contract, tort (including negligence, misrepresentation and breach of statutory duty) or otherwise, shall be limited to two times the Contract price for the relevant delivery of Goods or Services.
- 8.5 The Customer agrees to supply to the Company such forecasts of demand and purchase orders for Goods and Services as requested by the Company within the timeframes specified by the Company and shall indemnify the Company for any failure to do so. The Company shall have no liability for any loss or damage arising as a result of the failure of the Customer to comply with this obligation.
- 8.6 The Company shall have no liability whether in contract, tort or otherwise for any (i) loss of profit, loss of goodwill, loss of brand value or reputation or loss of future sales; or (ii) claims for consequential or indirect loss to a Customer or any other person in connection with the Goods or Services.
- 8.7 The Company shall have no liability for failure to perform its obligations under a Contract occasioned by any act beyond the reasonable control of the Company including, without limitation, human or animal disease (including without limitation, avian influenza) act of God, act of terrorism, war, adverse weather, action by government or other authority strike, accident or breakdown of plant or machinery, power failure, crop failure or fire.
- 8.8 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.