

# TERMS AND CONDITIONS OF SALE

## J.O. SIMS LIMITED

In these Terms and Conditions the following expressions shall have the following meanings attached to them:-

"Conditions"	these Terms and Conditions of Sale
"Company"	J.O. Sims Limited
"Customer"	any person firm or company who accepts a quotation from the Company for the sale of Goods or whose order for Goods is accepted by the Company
"Contract"	a contract between the Company and a Customer for the sale and purchase of Goods
"Goods"	any items which the Company contracts to sell to the Customer

### 1. BASIS OF CONTRACT

- 1.1 These Conditions shall apply to and govern all Contracts to the exclusion of any terms and conditions of the Customer and all other terms conditions or warranties whatsoever which are excluded from every Contract
- 1.2 These Conditions shall be deemed to be incorporated in every quotation issued by the Company and the Customer's own trading conditions shall not be regarded as a counter offer
- 1.3 A quotation by the Company shall not constitute an offer and there shall be no binding Contract until the Company has accepted an order from a Customer.
- 1.4 The exercise by the Company of any right pursuant to these Conditions shall be without prejudice to any other right available to it hereunder or under general law
- 1.5 The Customer acknowledges that no Contract will be entered into in reliance on any representations other than those (if any) incorporated in the Company's quotation and these Conditions
- 1.5 No cancellation suspension or variation of any Contract shall be valid unless agreed by the Company in writing and such agreement will only be given on terms which compensate the Company for all losses costs damages charges and expenses thereby incurred by the Company

### 2. PRICE

- 2.1 The price of the Goods shall be the Company's quoted price and unless otherwise specifically agreed by the Company all prices include transport costs and are exclusive of Value Added Tax
- 2.2 The Company reserves the right (by giving notice to the Customer at any time before delivery) to increase its prices to reflect any increase in the cost of materials or labour transport storage fuel or power charges arising after the date of the quotation or Contract or during the performance of the Contract

- 2.3 The Company reserves the right (by giving notice to the Customer at any time before delivery) to increase its prices as a result of increased costs arising due to changes in legislation or any other matter affecting the price including but not limited to changes in tariffs and duties arising after the date of the quotation or Contract or during the performance of the Contract
- 2.4 The costs of pallets and returnable containers will be charged to the Customer but full credit will be given to the Customer provided the same are returned undamaged to the Company before the due payment date

### 3. **DELIVERY**

- 3.1 Delivery dates and times specified by the Company are approximate only and unless expressly agreed by the Company in writing time of delivery is not and shall not be deemed to be of the essence
- 3.2 In the event of Goods being delivered by the Company to the Customer's premises by the Company's transport or by transport arranged by the Company the Customer shall unload the Goods immediately on arrival and the Company's employee or agent shall not be required to assist in unloading moving stacking or storing the Goods
- 3.3 If Goods are sold and delivered to the Customer in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated
- 3.4 The Company reserves the right to make any changes in the specification of Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are supplied to the Customer's specification which do not materially affect their quality
- 3.5 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions by 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 default) then and without prejudice to any other remedy of the Company the Company may:-
- 3.5.1 store the Goods until actual delivery and charge the Customer for all reasonable costs (including insurance) of storage; or
  - 3.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess of the price payable pursuant to the Contract or charge the Customer for any shortfall below that price

### 4. **RISK**

Risk of all loss damage or deterioration in the Goods shall pass to the Customer:-

- 4.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Customer that the Goods are available for collection; or

- 4.2 when Goods are to be delivered elsewhere at the time of delivery or (if the Customer wrongly fails to take delivery) the time when the Company has tendered delivery of the Goods

5. **PAYMENT TERMS**

- 5.1 All payments for Goods shall be paid within agreed terms of the date of either delivery of the Goods or (where the Goods are to be collected by the Customer or the Customer wrongly fails to take delivery of the Goods) the date upon which the Customer is notified that the Goods are available for collection or delivery (as the case may be) and not from the date of invoice and time of payment shall be of the essence
- 5.2 All other sums due to the Company from the Customer shall be payable on demand
- 5.3 Where Goods are delivered in instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions
- 5.4 If the Customer is in default in paying any sum as and when it becomes due the Company shall have the right to suspend all further deliveries until the default is made good and/or to cancel the Contract so far as any Goods remain to be delivered thereunder
- 5.5 In the event that the Customer fails to pay any monies by the due date the Company shall be entitled to charge (both before and after judgement) interest on the outstanding monies from such date to the date of actual payment at a rate equal to five per cent over the Base Rate from time to time of National Westminster Bank plc.

6. **INSOLVENCY OF CUSTOMER**

If:-

- 6.1 any distress or execution shall be levied on the Customer's property or assets or any part thereof or if the Customer shall make or offer to make any arrangement or composition with its creditors generally; or
- 6.2 the Customer (being an individual or a partnership) commits any act of bankruptcy or if a Petition or Receiving Order in Bankruptcy shall be presented or made against him or (being a partnership) if the said partnership is dissolved for whatsoever reason or becomes subject to an Administration Order or (being a limited company) becomes subject to an Administration Order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction only); or
- 6.3 a Receiver is appointed of all or any of the property or assets of the Customer; or
- 6.4 the Customer ceases or threatens to cease to carry on business; or
- 6.5 the Company reasonably apprehends that any of the events specified above is about to occur in relation to the Customer and so notifies the Customer then the Company shall without any liability to the Customer have the right forthwith to determine all subsisting Contracts with the Customer whether remaining to be performed in whole or in part by serving written notice of such

determination on the Customer and all monies then due to the Company from the Customer shall become immediately due and payable

## 7. **PROPERTY**

- 7.1 Title in the Goods or any part thereof shall only pass to the Customer when payment in full therefor has been made and the Customer shall permit so far as it is able and shall use its best endeavours to assist any officer employee representative or agent of the Company to enter onto any premises where the Goods may from time to time be situated to repossess the same at any time prior to title passing to the Customer and until such time as title to the Goods passes the Customer shall hold the Goods as the Company's fiduciary agent and bailee.
- 7.2 Until such time as the price of the Goods has been paid in full:-
- 7.2.1 the Customer shall at all times keep the Goods separate from all other goods in the Customer's possession and shall store the Goods in a safe and proper manner;
- 7.2.2 the Customer shall insure the Goods at all times and account to the Company for any proceeds of any such insurance up to the amount due for the Goods or any part thereof outstanding;
- 7.2.3 all proceeds of any such insurance shall until the relevant amount thereof has been paid to the Company pursuant to Condition 7.2.2 be kept separate from any and all other monies held by or on behalf of the Customer
- 7.3 The Customer shall be at liberty to sell Goods purchased from the Company prior to the passing of title thereto on the strict understanding that:-
- 7.3.1 the Goods are to be sold only by way of bona fide sale at market value in the ordinary course of the Customer's business;
- 7.3.2 the Customer will hold on trust for the Company so much of the proceeds of sale thereof including insurance proceeds received by the Customer as are necessary to discharge the sum due for the Goods to the Company; and
- 7.3.3 all such proceeds of sale shall pending payment to the Company as aforesaid be kept separate from any and all other monies held by or on behalf of the Customer
- 7.4 The Customer shall not in any event until all monies due for the Goods have been paid to the Company be entitled to pledge or in any way charge by way of security for any reason any of the Goods which remain the property of the Company and if the Customer does so or attempts so to do all monies due to the Company shall become immediately due and payable without prejudice to any other right or remedy of the Company
- 7.5 The Customer's power of sale of the Goods shall cease upon the happening of either of the following events:-
- 7.5.1 upon written notice from the Company after the Customer shall have failed to pay any sum due to the Company for a period exceeding seven days; and
- 7.5.2 ipso facto upon the happening of any event referred to in Condition 6

## 8. WARRANTIES AND LIABILITY

- 8.1 Subject to the following provisions of this Condition the Company warrants that the Goods shall comply with the Food Safety Act 1990 and all other statutory requirements and regulations relating specifically to the sale of food for human consumption
- 8.2 Subject as herein provided all other conditions warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 8.3 No claim for damage in transit shortage of delivery loss of Goods or failure of the Goods to meet any agreed specification will be entertained unless the Customer shall have given written notice of such damage shortage or failure with reasonable particulars thereof within 24 hours of receipt of the Goods or (in the case of total loss) of receipt of invoice or of notification of despatch (whichever shall be the earlier)
- 8.4 Where a valid claim based on any defect of quality quantity or condition of the Goods or any part thereof or their failure to meet any agreed specification is made by the Customer and notified to the Company in accordance with these Conditions the Company shall replace the Goods (or the part in question) free of charge or (at the Company's discretion) issue a credit note to the Customer for the price of the Goods or a proportionate part thereof (as the case may be) but the Company shall have no further liability to the Customer.
- 8.5 The Company shall not be liable to the Customer or deemed to be in breach of a Contract if its performance is restricted hindered delayed or the Company is prevented from carrying out its obligations under the Contract by any circumstances whatsoever outside the Company's reasonable control including (without prejudice to the generality of the foregoing and without limitation) any act of God war riot strike lock-out trade dispute or other labour disturbance fire flood difficulty in obtaining workmen fuel materials or transport or by government restrictions or the exercise of government authority total or partial failure of equipment or of the Company's suppliers and furthermore the Company shall be at liberty to determine or suspend any Contract so affected without incurring any liability for any loss or damage resulting to the Customer
- 8.6 Except in the case of death or personal injury resulting from the negligence of the Company or as expressly provided in these Conditions the Company shall not in any event be liable to the Customer in respect of any representation or implied warranty condition or other term or under any duty at common law or under the express terms of a Contract for any indirect or consequential loss or damage (including without limitation) loss of profits contracts or goodwill or for any other claims for consequential compensation whatsoever arising out of the supply or failure to supply Goods by the Company and whether arising in contract tort or otherwise and in all other cases liability shall be limited to the contract price

9. **GENERAL**

- 9.1 These Conditions and the rights and obligations of the parties to a Contract shall be governed interpreted and construed solely in accordance with English Laws
- 9.2 Any notice required to be served by either party shall be duly served if delivered by hand or sent by telex or facsimile transmission or by post by Recorded AR Delivery:-
- 9.2.1 in the case of service on an individual or partnership to his or their last known principal trading address; or
- 9.2.2 in the case of service on a limited company to its registered office for the time being
- 9.3 Any notice shall be deemed to have been served:-
- 9.3.1 if delivered by hand at the time of delivery;
- 9.3.2 if sent by telex or facsimile transmission at the time of completion of despatch; and
- 9.3.3 if sent by post by Recorded AR Delivery two days after the date of posting
- 9.4 Any Contract shall be personal to the Customer and may not be assigned without the prior consent of the Company
- 9.5 If any of these Conditions is found to be illegal or unenforceable it shall be deemed to have been deleted but the remaining Conditions shall continue in full force and effect
- 9.6 We may, at our discretion, approach a credit reference agency, which shall hold a record of that search and may share that information with other businesses.