

Part B

Terms and Conditions of Sale

Effective from 1st February 2014

1 DEFINITIONS AND INTERPRETATION

- 1.1 In these terms and conditions of sale, the following words will (unless the context otherwise requires) have the following meanings:

"Seller" can mean any one of the following companies or subsidiaries; Bidvest Fresh Ltd (Holding Company), Seafood Holdings Ltd (subsidiary), Henson Foods Ltd (subsidiary), Oliver Kay Ltd (Subsidiary), The Rustic Cheese Company Ltd (subsidiary) and any other trading names that the aforementioned companies trade under.

"Buyer" means the company, firm, body or person purchasing the Goods whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such company, firm, body or person.

"Conditions" means the conditions set out below in force from time to time.

"Contract" means any contract between the Seller and the Buyer for the sale of any Goods.

"Delivery Arrangements" means the instructions solely relating to delivery of the Goods given with an Order as agreed between the parties from time to time.

"Goods" means any goods specified in an Order.

"Order" means an order for the supply of Goods, together with the Delivery Arrangements either in Writing or by verbal agreement

"Writing" means writing on paper, facsimiles and electronic mail.

- 1.2 The headings are for reference only and will not affect the interpretation of these Conditions.
- 1.3 The Seller reserves the right at any time without liability to correct any clerical, typographical or other similar errors or omissions made by its employees.

2 APPLICATION OF CONDITIONS

- 2.1 These conditions govern the relationship between the Seller and the Buyer. All orders, whether taken by telephone, writing or otherwise, are subject to these Conditions and no other terms, warranties or other contractual terms (other than those expressly stated in these Conditions and those implied by law) endorsed upon, delivered with, referred to or stipulated or contained in any Order or other similar document delivered or sent to the Seller will form part of the Contract.
- 2.2 Any variation to these Conditions is only effective if one director of the Seller expressly agrees so in writing.

3 ACCEPTANCE OF ORDERS

- 3.1 Each Order issued by the Buyer will be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. The Seller reserves the right to accept or refuse any Order at its sole discretion.
- 3.2 Orders will be deemed to be accepted by the Seller on delivery of the Goods to the Buyer.
- 3.3 Where an Order is accepted, it is accepted subject to availability of the Goods.
- 3.4 The Buyer must ensure that the content of its Order is complete and accurate.
- 3.5 Subject to clause 6 below, any Order which has been accepted by the Seller in accordance with clause 3.2 may only be cancelled, postponed or varied by the Buyer with the prior consent of the Seller and on terms that the Buyer will indemnify the Seller in full against all losses (including but not limited to loss of profit), costs (including but not limited to inventory and other commitments made by the Seller as a result of such purchase order), damages, charges and expenses incurred (directly or indirectly) by the Seller as a result of such cancellation, postponement or variation.

4 PRICE

- 4.1 Unless otherwise agreed, Goods will be charged by reference to the Seller's price list and according to the quality and packing required at the appropriate price or prices prevailing at the time of delivery.
- 4.2 Quotations for other products to individual specifications will be given upon request. Any quotation is given on the basis that no contract will come into existence other than in accordance with clause 3.2.

4.3 Prices may be altered by the Seller with or without notice and all prices exclude any Value Added Tax that might be or become payable in respect thereof.

5 PAYMENT

5.1 The Seller may invoice the Buyer for Goods at any time after delivery of the Goods or after any instalment (as appropriate). Payment must be received (in cleared funds) by the Seller within its standard payment terms of 15th of the month following invoice date unless alternative express payment terms have been agreed in writing.

5.2 The Buyer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5.3 Payments may be required before delivery.

5.4 Failure of the Buyer to pay the Seller for Goods within the agreed payment terms may result in deliveries being suspended until full payment is received for all the Goods that have been delivered whether or not the payment terms have expired for all the Goods.

6 DELIVERY AND CLAIMS

6.1 The Goods shall be delivered in accordance with the Delivery Arrangements and this clause 6.

6.2 Delivery shall take place:

(a) where the Goods are to be delivered by the Seller to the Buyer's premises or other premises as agreed, when the Goods are unloaded at such premises; or

(b) where the Goods are to be delivered by the Seller to the Buyer's premises or other premises as agreed but at such a time when the Buyer (or any person on behalf of the Buyer) shall not be present to sign for the Goods, when the Goods are left at said premises in accordance with the Buyer's directions; or

(c) where the Goods are to be collected from the Seller's premises, when the Goods are collected by the Buyer (or a carrier other than the Seller in which case section 32(2) of the Sale of Goods Act 1979 shall not apply) at the Seller's premises or signed for, whichever is the earlier, unless the Goods are to be collected at a specified time and/or date in which case delivery shall be deemed to take place when the Seller notifies the Buyer that the Goods are ready for collection.

6.3 Save in the case of clause 6.2(b) above, on delivery the Buyer or nominated consignee shall provide a full name, job title and signature on the Seller's receipt note.

6.4 Any dates or times for the delivery of the Goods are given in good faith but are estimates. If no time is specified or agreed by the Seller delivery will take place within a reasonable time. Unless otherwise agreed in Writing, time for delivery of the Goods shall not be of the essence.

6.5 Deliveries of the Goods may be partially or totally suspended by the Seller during any period in which it is prevented from manufacturing, delivering or taking delivery of the Goods through any circumstances outside its control. If because of such circumstances the Seller is unable to supply the total value of the Goods, the Seller may allocate its available supply (after satisfaction of its own requirements) among all of its customers, including those not under contract, as the Seller sees fit. Deliveries so suspended shall be cancelled without liability, but the Contract between the parties shall otherwise remain unaffected.

6.6 The Seller may deliver the Goods in instalments. In all cases where the Contract provides for delivery by instalments, or part deliveries, each instalment or part delivery shall be deemed a separate Contract and the cancellation of one instalment or part delivery shall not vitiate or affect the Contract as to other instalments or part deliveries.

6.7 On delivery to the Buyer all Goods should be examined, save in the case of clause 6.2(b) in which case the Seller shall examine the Goods. The Seller will not be liable for any shortages, non-delivery or damage to the Goods (even if caused by the Seller's negligence) unless the same is notified in Writing by the Buyer to the Seller (together with all relevant details) within 24 hours of the actual delivery.

6.8 Subject to notice being provided in accordance with clause 6.7 the Seller will (if it is reasonably satisfied that any Goods have not been delivered as a result of the Seller's fault) (in its sole discretion) either arrange for delivery or replacement of the Goods as soon as reasonably possible or (where the Contract price has been invoiced) refund the invoice price (at the pro rata price) to the Buyer for such Goods.

6.9 If the Seller complies with clause 6.8 it will have no further liability (in contract or tort (including but not limited to negligence) for such shortages or non-delivery or damage. Under no circumstances will the Seller be liable for any consequential or indirect loss or damage however caused.

7 OWNERSHIP AND RISK

7.1 Ownership of the Goods (both legal and equitable) will remain with the Seller until the Seller has received payment (in cleared funds) for the Goods in full.

- 7.2 Until such payment the Buyer shall (at no cost to the Seller):
- (a) hold those Goods which are separately packaged or identifiable as distinct from other property of the Buyer or any third party on behalf of and in a fiduciary capacity for the Seller; and
 - (b) store and maintain such Goods in a satisfactory condition and in such a way as to be identifiable as the property of the Seller and by reference to the batch or invoice number.
- 7.3 In the event of non-payment by the Buyer by the due date, the Seller or its agents shall be entitled in addition to all other rights (including the right to demand the immediate return of the Goods at no cost to the Seller) to enter upon any land, premises or vehicle where those Goods or part of them may be for the time being and recover possession of them.
- 7.4 The Seller will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.5 The risk in the Goods passes to the Buyer upon delivery in accordance with clause 6.

8 PACKING MATERIALS

The Buyer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

9 LIMITATION OF LIABILITY

- 9.1 Save as expressly stated in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 Nothing in these Conditions excludes or limits the liability of the Seller for fraudulent misrepresentation or for any death or personal injury caused by the Seller's negligence.
- 9.3 Subject to clauses 9.1 and 9.2, the Seller will not be liable to the Buyer in contract, tort (including but not limited to negligence) misrepresentation or otherwise for any:
- (a) economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings);
 - (b) any damage to the Buyer's reputation or goodwill;
 - (c) any other special, indirect or consequential loss or damage arising out of or in connection with the Contract.
- 9.4 The provisions of this clause 9 shall survive the termination or expiry (for whatever reason) of this Contract.

10 TERMINATION

- 10.1. Should the Buyer;
- 10.1.1. commit a material breach of any term of these Conditions which breach is irremediable or (if such breach is remediable) fail to remedy that breach within a period of 7 days after being notified to do so;
 - 10.1.2. repeatedly breach any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions
 - 10.1.3. suspend, or threaten to suspend, payment of its debts or be unable to pay its debts as they fall due or admit inability to pay its debts;
 - 10.1.4. commence negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or make a proposal for or enter into any compromise or arrangement with its creditors;
 - 10.1.5. be the subject of a petition, a notice, or an order for or in connection with its winding up;
 - 10.1.6. be the subject of a court application or a court order for the appointment of an administrator, or be the subject of a notice of intention to appoint an administrator or have an administrator appointed over it;
 - 10.1.7. have a receiver appointed over its assets;
 - 10.1.8. be the subject of a bankruptcy or sequestration petition or order;
 - 10.1.9. be subject to an event or proceeding in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in clause 11.1.3 to 11.1.8 (inclusive); or

10.1.10. suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of its business;
the Seller may, at its option, cancel or withhold all further deliveries and/or terminate the Contract immediately.

10.2. The termination of this Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

10.3. Any part of these Conditions which impliedly has effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

11. GENERAL CONDITIONS

11.1. The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Seller's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11.2. If the Seller has to contact the Buyer or give the Buyer notice in writing, the Seller will do so by e-mail or by pre-paid post to the address the Buyer provides to the Seller in the Buyer's Order.

11.3. The Seller may transfer the Seller's rights and obligations under a Contract to another organisation, but this will not affect the Buyer's rights or the Seller's obligations under these Conditions.

11.4. The Buyer may only transfer the Buyer's rights or the Buyer's obligations under these Conditions to another person if the Seller agrees in writing.

11.5. The Contract is between the Buyer and the Seller. No other person shall have any rights to enforce any of its Conditions, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.

11.6. Each clause of these Conditions operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.

11.7. If the Seller fails to insist that the Buyer performs any of the Buyer's obligations under these Conditions, or if the Seller does not enforce the Seller's rights against the Buyer, or if the Seller delays in doing so, that will not mean that the Seller has waived the Seller's rights against the Buyer and will not mean that the Buyer does not have to comply with those obligations. If the Seller does waive a default by the Buyer, the Seller will only do so in writing, and that will not mean that the Seller will automatically waive any later default by the Buyer.

11.8. Any Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11.9. The Seller and Buyer both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, the Seller shall be entitled to take action (including any interim or injunctive relief) against the Buyer in any court which has authority to settle any dispute.