

Heron Foods Ltd.

Terms and Conditions of Purchase

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day	Any Day of the Week including Bank Holidays excluding Christmas Day.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 15.6.
Contract	the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.
Customer	Heron Foods Limited (registered in England and Wales with company number 01392197).
Goods	the food products and non food products (or any part of them) set out in the Order.
Order	the Customer's purchase order for the Goods, as set out in the Customer's purchase order form.
Specification	All detailed qualities, properties and descriptions (including without limitation photographs) of any of the Goods supplied by the Supplier to the Customer.
Supplier	the person, firm or company or other entity from whom the Customer purchases the Goods.

1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
 - 2.3.1 the Supplier issuing a written acceptance of the Order; and
 - 2.3.2 the Supplier doing any act consistent with fulfilling the Order,at which point the Contract shall come into existence.

3. Forecasting

- 3.1 From time to time the Customer may issue a non-binding forecast to the Supplier (at its sole option and discretion) for production guidance only. This non-binding forecast is for guidance and illustrative purposes only and does not form part of the Contract with the Supplier and the volumes and dates quoted in any forecast are not contractually binding.

4. The Goods

- 4.1 The Supplier warrants that the Goods shall:
- 4.1.1 correspond with their description, samples previously provided to the Customer, and the Specification agreed between the Customer and the Supplier.
 - 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
 - 4.1.3 where they are manufactured products, be free from defects in quality, material, ingredients and production and remain so for a reasonable period after delivery in light of the nature of the Goods;
 - 4.1.4 comply with all applicable statutory and regulatory requirements relating to the production, labelling, packaging, storage, handling and delivery of the Goods; and
 - 4.1.5 comply with the Customer's Supplier Guiding Principles which are available upon request.
- 4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.3 The Customer shall have the right to inspect and test and approve the Goods at any time before delivery.
- 4.4 If following such inspection or testing or approval the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5 Notwithstanding any such inspection or testing or approval, the Supplier shall remain fully responsible for the Goods and any such inspection or testing or approval shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the

Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

5. Delivery

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in perfect condition. Chilled Goods must be transported at a temperature range between 1° Celsius and 4° Celsius. Frozen Goods must be transported below -18°Celsius.

5.1.2 the Goods are supplied in accordance with the Heron Foods Ltd Logistics Guiding Principles which are available upon request.

5.1.3 each delivery of the Goods must be accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, the Heron code number, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

5.1.4 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

5.2.1 on the date and time specified in the Order unless otherwise agreed in advance and in writing. (**Delivery Date**);

5.2.2 to the Customer's premises at Jackson Way, Melton, HU14 3HJ or such other location as is set out in the Order, or as instructed by the Customer prior to delivery (**Delivery Location**).

5.3 Goods shall be deemed to have been delivered upon completion of unloading at the Delivery Location.

5.4 If the Supplier:

5.4.1 delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or

5.4.2 delivers more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

5.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.

6. Remedies

6.1 If the Goods are not delivered on the Delivery Date, or do not comply in whole or in part with the undertakings set out in clause 4.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

6.1.1 to terminate the Contract;

6.1.2 to reject the Goods (in whole or in part) at any time and return them to the Supplier at the Supplier's own risk and expense;

6.1.3 to require the Supplier to replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

6.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

6.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and

- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.2 If the Goods are not delivered on the Delivery Date the Customer may at its option claim or deduct 10 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 90 per cent of the total price of the Goods. If the Customer exercises its rights under this clause 6.2, it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 6.3 These Conditions shall apply to any replacement Goods supplied by the Supplier.
- 6.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. Title and risk

Title and risk in the Goods shall pass to the Customer on completion of delivery.

8. Price and payment

- 8.1 The price of the Goods shall be the price set out in the Order.
- 8.2 The price of the Goods is fixed and is an inclusive delivered price or a DDP Incoterm inclusive price if imported into the UK. The price is exclusive of amounts in respect of value added tax (**VAT**), but includes the costs of packaging, insurance ,carriage of the Goods and any consents, licences, import taxes or duties. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.3 The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

- 8.5 The Customer shall pay correctly rendered invoices end of month following the month of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.6 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

9. **Customer materials**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation

10. **Indemnity**

- 10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:
- 10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

11. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, recall insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract. Such insurance cover shall be for a minimum of £10,000,000 for each category of cover. The Supplier shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Confidentiality

12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Contract.

13. Termination

- 13.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect and without the payment of any compensation or other payment by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. For the avoidance of any doubt, the Customer shall not be liable for any packaging, raw material, work in progress, finished goods or costs incurred by the Supplier in connection with the Contract. The Customer also, shall not be liable for any loss of profit (direct or indirect) or consequential loss the Supplier may purport to claim in connection with the termination of the Contract.
- 13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - 13.2.2 the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - 13.2.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
 - 13.2.4 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent

amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 13.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
 - 13.2.6 (being a company) the holder of a qualifying floating charge over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.7 (being an individual) the Supplier is the subject of a bankruptcy petition or order;
 - 13.2.8 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 13.2.9 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
 - 13.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.9 inclusive;
 - 13.2.11 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
 - 13.2.12 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 13.2.13 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14. Force majeure

14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from Act of God, war, flood, fire, explosion, and the act of any Government or authority , but not industrial action, strike or lockout of that party's employees, or any other disruptive weather conditions .

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 7 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

15. General

15.1 Assignment and other dealings.

15.1.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

15.2 Notices.

15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

- 15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after sending
- 15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 15.7 **Governing law.** The 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.
- 15.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in

connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).