

CHELMER FOODS LIMITED SALE TERMS & CONDITIONS

Dated 17th July 2025

1. Definitions

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 09:00 to 17:00 on any Business Day.

Buyer: the person or company who purchases the Goods from the Seller.

Conditions: the terms and conditions in this document as amended from time to time in accordance with clause 15.6.

Contract: the Contract (including any accepted Order as set out in clause 2.4) between Buyer and Seller for the sale and purchase of the Goods in accordance with these Conditions.

Delivery Location: shall mean the place the Seller is required to deliver the Goods as specified in the Order.

Force Majeure Event: means any circumstance not within a party's reasonable control, whether or not reasonably foreseeable, including:

- (i) acts of God, flood, drought, earthquake, crop failure, abnormal weather conditions or other natural disaster;
- (ii) epidemic or pandemic (including Covid-19);
- (iii) terrorist attack, civil war, riot, insurrection, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations or any act of intervention of government;
- (iv) nuclear, chemical or biological contamination or sonic boom;
- (v) collapse of buildings, fire, explosions or accident; and
- (vi) strikes, lock outs, or other industrial action or trade disputes.

Goods: articles or commodities or things or any part of them to be supplied under the Order pursuant to the Contract.

Order: the Buyer's order for the Goods, as set out overleaf.

Price: the value of the Goods as specified in the Order or the relevant invoice, as the case may be.

Seller: Chelmer Foods Limited, a company incorporated and registered in England and Wales with company number: 02704138 whose registered office is at 220 Avenue West, The Courtyard Skyline, 120 Business Park, Great Notley, Braintree, Essex, CM77 7AA.

Specification: any specification for the Goods, including description and quality standards, that is agreed in writing between the Buyer and the Seller.

1.2 Interpretation

- (a) Clause and accepted Order headings shall not affect the interpretation of these Conditions.

- (b) An accepted Order pursuant to clause 2.4 shall form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the accepted Order.
- (c) Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (f) A reference to writing or written includes email but not fax.

2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 If any trade association terms and rules of arbitration are referred to in the Contract, such terms shall be incorporated into the Contract to the extent they are consistent with the Contract. In the event there are contradictions, these terms and conditions shall prevail.
- 2.3 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point, and on which date the Contract shall come into existence.
- 2.5 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for the period stated therein or if subsequently confirmed by the Seller. Where the Buyer accepts a quotation this will be considered an offer by the Buyer to purchase the Goods and the provisions of clause 2.4 shall apply.

3. Quantity

The Customer acknowledges and agrees the word 'about' (which may appear in pre-order price lists or any other documentation/material supplied by the Seller to the Buyer) used in connection with the Contract when applied to quantity of Goods contracted or of any agreed instalment shall mean 10 % more or less in Seller's option.

4. Quality

- 4.1 Subject to clause 4.6, the Seller warrants the Goods shall be fair average quality for the season from the specified country of origin.
- 4.2 Subject to clause 4.6, the Seller will use reasonable endeavours to ensure the Goods comply with the Specification agreed with the Buyer as referred to overleaf.
- 4.3 Except as provided in clause 4.1 and 4.2, Seller does not give nor imply any warranty or condition as to the conformity of the Goods with their description, their quality or their suitability or fitness for any particular purpose or use under any specific conditions (whether or not the purpose or condition were known by or communicated to Seller) and the onus is on the Buyer to ensure that the Goods are fit for any required purpose.

- 4.4 The Buyer shall carry out all quality control checks on the Goods prior to their use and upon the Goods (or part thereof) being processed or altered in any way they shall be deemed accepted by the Buyer.
- 4.5 Where the term Ready to Use ('RTU') is used within the Contract or any other documentation/material provided by the Supplier to the Buyer in connection with the Contract, it does not guarantee total absence of stones, stalks or other indigenous foreign bodies and as such the Buyer must inspect the Goods before use.
- 4.6 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 and clause 4.2 if:
- 4.6.1 the Buyer makes further use of such Goods after giving notice in accordance with clause 5;
 - 4.6.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions;
 - 4.6.3 the defect arises because as a result of abnormal storage conditions or negligence of the Buyer; or
 - 4.6.4 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5. Claims

- 5.1 Any claims for a breach of clause 4.1 by the Buyer in relation to the Goods must be notified to Seller in writing within 14 days of delivery to the Buyer's premises or handover upon arrival at a port or other agreed destination, whichever is applicable.
- 5.2 Any claims for breaches of clause 4.2, short or incorrect delivery or damaged Goods must be notified to the Seller with 48 hours of receipt of goods. Non delivery must be notified to Seller within 7 days of advice of delivery.
- 5.3 All claims must specify brands, marks, codes, invoice numbers and dates.
- 5.4 Claims in respect of alleged defective condition of the Goods must be accompanied by satisfactory evidence that Goods concerned had been stored in conditions and temperatures as prescribed by the instructions specified by the Seller accompanying the Goods.
- 5.5 Failure by the Buyer to notify Seller as specified in Clauses 5.1 to 5.4 (inclusive) above relieves Seller of all liability.

6. Shipment Date

The date stated on any bill of lading or (if none) on the delivery order of any carrier (if applicable) or the invoice from Seller shall, for all purposes, be treated as the date of shipment of the Goods.

7. Delivery

- 7.1 Any dates quoted for delivery, shipment or collection are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 7.2 Unless agreed otherwise, delivery terms are FCA Incoterms 2020. Pallets are to be exchanged on collection unless agreed otherwise.
- 7.3 Subject to clause 7.2 and clause 7.7, the Seller shall deliver the Goods to the Delivery Location.
- 7.4 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 7.5 Delays in delivery of an Order shall not entitle the Buyer to:
 - 7.5.1 refuse to take delivery of the Order; or
 - 7.5.2 terminate the Contract, subject to clause 14.
- 7.6 The Seller shall have no liability for any failure or delay in delivering an Order if and to the extent that any such failure or delay is caused by the Buyer's failure to comply with its obligations under this Contract.
- 7.6 The Seller may deliver the Goods by instalments, which shall be separate contracts and invoiced and paid for separately. Where the Goods are to be delivered in instalments any default by:
 - 7.6.1 the Buyer in paying or taking delivery for Goods within the timeframe of the Contract, shall entitle the Seller, at its absolute discretion, to terminate the Contract in respect of all future instalments but without prejudice to Seller's right to be paid for Goods already delivered;
 - 7.6.2 the Seller with respect to any instalment shall not entitle the Buyer to cancel the Contract with respect to any remaining installment(s).
- 7.7 Where it is agreed that the Buyer will collect the Goods from the Seller's premises, if the Buyer has not collected the Goods from the Seller's premises or otherwise taken possession and control of the Goods as contemplated under the Contract 28 days after the due date for collection or handover as the case may be, then the Seller shall be entitled to sell the Goods and the Buyer shall reimburse the Seller for the costs of storage and insurance for the goods from the end of the said 28 day period together with any other expenses or loss which the Seller may incur or suffer as a result including but not limited to any shortfall between the Price under Contract and the price for which the Seller sells the Goods.

8. Price

- 8.1 The Seller may, at its absolute discretion, by giving notice to the Buyer at any time up to 5 Business Days before delivery, increase the Price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 8.1.1 any factor beyond the Seller's control (including exchange rates, freight, insurance, export and import duties, port duties, increases in labour, materials, any other operating costs, deviation and landing charges);
 - 8.1.2 any request by the Buyer to change the delivery date quantities or types of Goods ordered, or the Specification; or
 - 8.1.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 8.2 The Price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice.

9. Payment

- 9.1 It is of the essence of the Contract that payment of the Price must be paid in cleared funds to

- the nominated bank account by the date and time specified on the invoice.
- 9.2 Interest on any payment not made by the due date (specified in clause 9.1) will be payable at the annual rate of 3% above Barclays Bank's base rate accruing from day to day from the date when payment was due and compounded until full payment is received by the Seller.
- 9.3 If the Seller at any time reasonable believes based on information it has received from reputable sources (such as but not limited to credit reference agencies) that the Buyer is in financial difficulties such that there is reason to doubt whether it will be able to pay the Price when due, then the Seller reserves the right at its sole discretion to demand security for payment of the Price or cash in advance before delivering or making any Goods available for collection.
- 9.4 If any payment due from the Buyer to the Seller under the Contract or otherwise is unpaid, the Seller shall be entitled to terminate the Contract, withhold delivery or collection of the Goods and to be reimbursed by the Buyer for any costs (including storage and insurance costs), expenses or loss suffered or incurred by the Seller as a result.
- 9.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Title

- 10.1 Title in the Goods shall not pass to the Buyer until payment in full for all Goods and for any other goods supplied to the Buyer by the Seller has been received by the Seller in cleared funds.
- 10.2 Until the title passes the Buyer shall:
- 10.2.1 store the Goods separately or so that they can be identified as the property of the Seller;
 - 10.2.2 not remove, deface or obscure any packaging on or relating to the Goods;
 - 10.2.3 maintain the Goods in satisfactory condition;
 - 10.2.4 notify the Seller if it becomes subject to the events listed in clause 13.1.2.3; and
 - 10.2.5 give the Seller such information as the Seller may reasonably require from time to time relating to:
 - 10.2.5.1 the Goods; and
 - 10.2.5.2 the ongoing financial position of the Buyer.
- 10.3 At any time before title to the Goods passes to the Buyer, the Seller may require the Buyer to deliver all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them. The Buyer shall ensure that any such third party shall grant the Seller the right of access.
- 10.4 If the Goods are attached to, incorporated in or otherwise combined with other items to which title is not held by the Seller then where the Goods:
- 10.4.1 remain identifiable and can be separated from the other items, the Buyer shall, when requested by the Seller, effect the separation of the Goods at its own expense and restore the Goods to the Seller.
 - 10.4.2 although still identifiable, cannot be separated from the other items without causing a total loss of the combined product, or where the Goods are used to form all or part of a new product, property in such combined or new product will belong to the Seller unless the other items include items to which title is held by a third party in which case the property will belong to the Seller and such third party jointly in proportion to their respective invoice prices.

11. Risk

Risk in the Goods shall pass to the Buyer when the Goods are delivered pursuant to clause 7.4 or collected by the Buyer or its agent pursuant to clause 7.7 and from that time the Buyer will keep the Goods fully insured at invoice value and the Seller indemnified against all risks until full payment of all sums due has been received by the Seller.

12. Limitation of Liability

- 12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with this Contract including liability in contract, tort (including negligence, misrepresentation, dishonesty (of employees, officers and other agents), restitution or otherwise.
- 12.2 Nothing in this Contract shall limit or exclude any liability for:
 - 12.2.1 death or personal injury caused by negligence;
 - 12.2.2 fraud or fraudulent misrepresentation;
 - 12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and/or
 - 12.2.4 any other liability which cannot be limited or excluded by applicable law.
- 12.3 Nothing in this Contract shall limit or exclude the Buyer's payment obligations under this Contract.
- 12.4 Subject to clause 12.2, the Seller's total liability in aggregate under this Contract shall not exceed the net invoiced Price of Goods the Buyer has paid the Seller under the Contract.
- 12.5 Subject to clause 12.2, the Seller shall not be liable for:
 - 12.5.1 loss of profits (including loss of anticipated profits);
 - 12.5.2 loss of sales or business;
 - 12.5.3 loss of agreements, contracts or customers;
 - 12.5.4 loss of anticipated savings;
 - 12.5.5 loss of or damage to goodwill; or
 - 12.5.6 indirect or consequential loss.

13. Termination

- 13.1 Without limiting its other rights or remedies, the Seller may:
 - 13.1.2 repossess the Goods (and for this purpose Seller or its employees or agents are hereby authorised to enter the Buyer's premises or any other place where the Goods are located by whatever lawful means are available) or suspend provision of the Goods or terminate this Contract with immediate effect by giving written notice to the Buyer if the Buyer:
 - 13.1.2.1 commits a material breach of this Contract or any other contract with the Seller;
 - 13.1.2.2 fails to pay any amount due under this Contract on the due date for payment and fails to remedy such action within 30 days of that party being notified in writing to do so; or
 - 13.1.2.3 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, obtaining a moratorium, being wound up, having a receiver appointed to any of its assets; or suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or is in a financial position which deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 13.2 On termination of the contract the Buyer shall immediately pay to the Seller all Seller's unpaid invoices plus interest.
- 13.3 The Buyer will remain liable for the difference between the net proceeds of repossessed goods and outstanding sums due to the Seller.

14. Force Majeure

- 14.1 If and to the extent the Seller is prevented, impeded, hindered, conditioned or delayed in performing its obligations under this Contract, the Seller will not be liable for failure to perform its obligations arising from the Force Majeure Event.
- 14.2 If the Force Majeure Event prevents, impedes, hinders, conditions or delays the Seller's performance of its obligations for a continuous period of more than 4 weeks, then either party to the Contract may terminate the Contract by giving 2 weeks' written notice to the other party.

15. General

- 15.1 **Set off.** The Buyer is not entitled to withhold payment of any amount due under the Contract in respect of any disputed claim for damage to the Goods or any other alleged breach of the Contract by the Seller or to set off any monies for which the Seller disputes liability against any amount due or payable by the Buyer under the Contract or any other contract with the Seller.
- 15.2 **Waiver.** The exercise of any rights or remedies of the Seller under the Contract shall not preclude it from exercising any other right or remedy.
- 15.3 **Severance.** If the whole or any part of the Contract is declared invalid or unenforceable at law, all other provisions shall remain in full force and effect and the parties shall negotiate in good faith to agree and implement substitute provisions which to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.4 **Assignment.** The Buyer may not at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract, unless it obtains the written consent of the Seller.
- 15.5 **Entire agreement.** The Contract represents the entire agreement between the parties relating to its subject matter and supersedes any and all prior promises, agreements, statements and understandings whatsoever. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party also agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract. Nothing under this clause shall limit or exclude any liability for fraudulent misrepresentation.
- 15.6 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties.
- 15.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **Notices.** Any notice given in connection with the Contract may be sent by hand, registered post, recorded delivery service or email. Where notices are sent by email, they will be deemed to have been received immediately on successful sending, unless such notice outside of the Business Hours, in such circumstances notice will be deemed to have been received on the next Business Day when the Business Hours resume. The postal address and email address where notice shall be sent shall be set out in the Order.

- 15.9 **Conflict.** Where the parties agree that the Incoterms 2020 apply to this Contract, the parties acknowledge and agree the provisions of the relevant provision of this Contract shall override the relevant provision of the Incoterms 2020 if and to the extent there is a conflict.
- 15.10 **Governing law.** The Contract shall be governed by and construed in accordance with the laws of England and Wales.
- 15.11 **Arbitration.** Any disputes that cannot be resolved amicably or through mediation, shall be referred to and resolved under the arbitration body referred to in the contract. If no trade association is referred to, the current rules of arbitration and appeal of The Nut & Dried Fruit Trade Association (NDFTA) shall apply. Any award by the arbitration tribunal shall be final and binding upon the parties.
- 15.12 **Jurisdiction.** The Seller may, at its sole discretion, by giving notice to the Buyer, any time following failure to reach an amicable settlement, (but in any event within 15 days of receipt of a written notice from the Buyer of its intention to refer a dispute to arbitration), determine that any such dispute should be determined by the courts as per clause 15.11, in which case the Buyer submits to their jurisdiction.