

# TERMS AND CONDITIONS OF SALE OF GOODS



## NATCO FOODS LIMITED trading as NATCO INGREDIENTS

### **Natco Ingredients**

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## 1 INTERPRETATION

- 1.1 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.2 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

## 2 APPLICATION OF TERMS

- 2.1 These terms and conditions (the “Terms”) of sale apply to all contracts of sale entered into by Natco Foods Limited trading as Natco Ingredients (“the Seller”) with the person(s) firm or seller (“the Buyer”) (“the Contract”) who purchases the goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part of parts of them) (“the Goods”). Notwithstanding any conflict with any terms and conditions specified by the Buyer in the Buyer’s order form or otherwise, the Seller’s acceptance of the Buyer’s order is on the condition that only these terms shall apply to the order. By acceptance of deliveries, the Buyer shall be deemed to accept the terms contained herein. Failure by the Seller to object to any term and condition contained in any communication from the Buyer shall not be deemed to be a waiver of these terms.
- 2.2 No variation of these terms shall be binding unless agreed in writing by a Director of the Seller. The Seller’s employees or agents are not authorised to make any representations concerning the Goods. In entering into a Contract, the Buyer acknowledges that it does not rely on any such representations, but nothing in these terms affects the liability of either party for fraudulent misrepresentation.
- 2.3 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller’s authorised representative, or delivery of the Goods is made. All orders are accepted subject to the availability of the Goods at the time of despatch.
- 2.4 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.5 Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid until the end of the day of trading on the day of offer unless otherwise stated, provided that the Seller has not previously withdrawn it.

## 3 PRICE

- 3.1 Unless otherwise stated in writing, prices quoted include the cost of delivery to the Buyer’s premises in the UK mainland, but exclusive of taxes.
- 3.2 The price of the Goods shall be that agreed between the parties at the time the Seller accepts the Buyer’s order.

## 4 DELIVERY

- 4.1 Unless otherwise agreed in writing by the Seller delivery of the Goods shall take place at the Buyer's place of business (the "Delivery Point").
- 4.2 All delivery dates are given in good faith and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time. The Seller shall not be liable for delay in delivery due to circumstances beyond the reasonable control of the Seller. In the event of any such delay the date for delivery shall automatically be extended and the Seller will not be liable for any direct, indirect or consequential loss (including loss of profits, loss of sales, loss of turnover, loss of or damage to business, loss of or damage to reputation, loss of contracts, loss of customers, wasted management or other staff time, losses or liabilities under or in relation to any other contract, depletion of goodwill or like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods or failure to deliver the Goods provided that such delay shall entitle the Buyer to rescind or terminate the Contract if such delay exceeds 180 days. For the purpose of this condition the term "loss" includes a partial loss or reduction in value as well as complete or total loss.
- 4.3 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.3.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - 4.3.2 the Goods will be deemed to have been delivered; and
  - 4.3.3 the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).
- 4.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.5 All pallets are returnable. If the Buyer is unable to provide sound exchange pallets at the time of delivery, such pallets shall be returned at the time of the Seller's next delivery to the Buyer, or within 21 days, if the Seller has no further deliveries to fulfil with the Buyer. In the event that no pallets are returned, or poor condition pallets are returned, a charge of £7 per pallet will be charged to the Buyer.
- 4.6 The Seller may deliver up to 5% less or more in weight in the quantity of Goods ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 4.7 Each delivery of the Goods by the Seller to the Buyer shall be a separate Contract except when the Contract is specifically for delivery by instalments and the Buyer shall not be entitled to withhold any payment due under one Contract against any claim under any other Contract and failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments.
- 4.8 If the Goods or any part thereof supplied under the Contract are processed or altered in any way by the Buyer or receiver of the Goods or any other person, the quality of the Goods shall be deemed acceptable to the Buyer. All the Buyer's quality control checks are to be completed on the entire load prior to use in production.

## 5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless written notice is given to the Seller within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

## 6 QUALITY

- 6.1 The Goods
- 6.1.1 the Seller warrants that (subject to the other provisions of these conditions) upon delivery and until the best before date marked on the Goods, the Goods will:
- be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
  - be reasonably fit for their purpose; and
  - comply with all legislation and regulations in force from time to time in the UK relating to food quality or safety.
- 6.1.2 the Seller shall not be liable for a breach of any of the warranties in condition 6.1.1 unless:
- for defects such as, but not limited to spillages, shortages, or infestations, which are obvious on delivery without the need for inspection, the Buyer gives written notice of the defect to the Seller, and (if the defect is as a result of damage in transit) to the carrier, within 2 working days from delivery; or
  - in the case of any other defect, the Buyer gives written notice of that defect to the Seller, and (if the defect is as a result of damage in transit) to the carrier, within 5 working days from delivery; and
  - the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there.
- 6.1.3 the Seller shall not be liable for a breach of any of the warranties in condition 6.1.1 if:
- the Buyer makes any further use of such Goods after giving such notice under condition 6.1.2; or
  - the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice; or
  - the Buyer alters such Goods without the written consent of the Seller.

- 6.1.4 subject to conditions 6.1.2, 6.1.3 and 6.1.6, if any of the Goods do not conform with any of the warranties in condition 6.1.1 the Seller shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata contract rate provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 6.1.5 if the Seller complies with condition 6.1.4 it shall have no further liability for a breach of any of the warranties in condition 6.1.1 in respect of such Goods.
- 6.1.6 in the event of a dispute arising under condition 6.1.1, the Seller will appoint an independent expert to determine whether the Goods comply with the warranty at condition 6.1.1; such expert's decision will bind the parties and the cost of the expert shall be borne by the party against whom the expert's decision is made.

***(The Buyer's attention is drawn to the provisions of conditions 6.2 and 6.3 below)***

- 6.2 **Testing:** The Seller tests all Goods under HACCP procedures and issue certificates of analysis, prior to release. Any natural products (not steam sterilised/untreated) supplied, cannot be guaranteed to be free from harmful pathogens. It is the Buyer's responsibility to check the suitability of any natural product supplied (not steam sterilised/untreated), to ensure it is fit for intended use. The Seller's specifications on natural products, indicate levels to which it will release goods for sale, but the Seller does not offer a guarantee on any micro levels. If the Buyer is unsure of the suitability of a natural untreated product, please consult the Seller prior to buying the Goods and most importantly before using the Goods in production or re-sale.
- 6.3 **Infestation:** Relating particularly to Coriander Seed, Whole Chillies and Fennel Seed: The Seller cannot guarantee that the Goods will not at a later date, be subject to infestation, unless specifically vacuum treated or heat treated. Even after treatments, treated goods can be subject to re-infestation if incorrectly stored. Untreated seeds, herbs and spices in any form, treated with approved chemical fumigants, are still susceptible to possible infestation, as insect eggs are not destroyed by current chemical fumigants.

## 7 LIABILITY

- 7.1 Subject to condition 6, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 7.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation or under Part 1 of the Consumer Protection Act 1987.

***(The Buyer's attention is drawn to the provisions of conditions 7.3 and 7.4 below)***

- 7.3 Subject to conditions 7.1 and 7.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or non-performance or late performance or contemplated performance of the Contract shall be limited to the price of the Goods ordered in the Contract plus 20%.

- 7.4 Subject to conditions 7.1 and 7.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of sales, loss of turnover, loss of or damage to business, loss of or damage to reputation, loss of contracts, loss of customers, wasted management or other staff time, losses or liabilities under or in relation to any other contract, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract. For the purposes of this condition the term “loss” includes a partial loss or reduction in value as well as a complete or total loss.
- 7.5 Orders will be accepted subject to the satisfactory credit status of the Buyer and the Seller reserves the right to terminate the Contract in the event of the credit status of the Buyer, ceasing to be satisfactory to the Seller.

## 8 DESCRIPTION

- 8.1 The Goods will be supplied substantially to the specification described in the price list. In the event of alteration to the weight or the packing specification, orders will be delivered and invoiced accordingly.
- 8.2 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of this Contract.

## 9 PAYMENT

- 9.1 Payment shall be made by the Buyer to the Seller 28 days from date of delivery of the Goods in full unless otherwise agreed and confirmed in writing by the Seller. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer. If the Buyer fails to pay the Seller any sum due the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Seller reserves the right to suspend any further deliveries, and cancel any orders from the Buyer in the event that any monies under any contract between the Buyer and the Seller are outstanding.
- 9.2 The Buyer hereby agrees that in the event that any cheque, bill of exchange, promissory note or other negotiable instrument is dishonoured or returned to the Seller’s banks unpaid for any reason, the Seller shall be entitled to invoice the Buyer for all reasonable sums due including costs relating to bank charges incurred and the cost of any related administrative activities. In the event that the charges mentioned herein as debited to the Buyer’s account remain unpaid for the period agreed in the invoice, the Seller shall be entitled to charge interest at the rate of 3% per annum above the base lending rate from time to time of Barclays Bank Plc.

## 10 RISK AND TITLE

- 10.1 Risk shall pass on delivery at the Buyer's premises. If the Buyer fails to take delivery of the Goods, or fails to provide adequate delivery instructions then, without limitation, the Seller may:
- 10.1.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance or storage); or
  - 10.1.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract, or charge the Buyer for any shortfall below the price under the Contract.
- 10.2 The Goods are at the risk of the Buyer from the time of delivery. Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Seller from the Buyer on any account.
- 10.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 10.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
  - 10.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - 10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 10.3.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
  - 10.3.5 hold the proceeds of the insurance referred to in condition 10.3.3 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 10.4 The Buyer may resell the Goods before ownership has passed to it solely on condition that any sale shall be effected in the ordinary course of the Buyer's business at full market value and any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 10.5 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 10.6 The Buyer's right to possession of the Goods shall terminate immediately if:
- 10.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition

presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

10.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

10.6.3 the Buyer encumbers or in any way charges any of the Goods.

10.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter the premises where the Goods are being or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 11 INTELLECTUAL PROPERTY

11.1 The property and any copyright or other intellectual property rights in:-

11.1.1 Any document or other material and any data or other information provided by the Buyer to the Seller shall belong to the Buyer;

11.1.2 Any document or other material and any data or other information provided by the Seller to the Buyer shall, unless otherwise agreed in writing between the Buyer and the Seller, belong to the Seller, subject only to a licence in favour of the Buyer to use the Seller intellectual property rights required for the purposes of receiving the Goods.

## 12 ASSIGNMENT

12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

12.2 The Seller may assign the Contract or any part of it to any person, firm or company.

## 13 FORCE MAJEURE

13.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to the circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes or restraints or delays affecting carriers or inability to or delay in obtaining supplies of adequate or suitable Goods, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer is entitled to give notice to the Seller to terminate the Contract.

## 14 GENERAL

- 14.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 14.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6 This Contract shall be governed by and construed in accordance with the laws of England whose Courts shall have exclusive jurisdiction to which the Buyer and the Seller hereby submit.

## 15 NOTICES

- 15.1 All notices between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 15.1.1 (in case of notices to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
- 15.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Seller by the Buyer.
- 15.2 Notices shall be deemed to have been received:
- 15.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);
- 15.2.2 if delivered by hand, on the day of delivery;
- 15.2.3 if sent by facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.

Notices addressed to the Seller shall be marked for the attention of the Manager.