

Libra Seafoods Ltd

TERM AND CONDITIONS OF BUSINESS

1. Interpretation

1.1 In these Conditions:

'Buyer' means the person who accepts a quotation of Libra Seafoods Ltd for the sale of Goods or whose order for the Goods is accepted by Libra Seafoods Ltd. 'Goods' means the goods (including any instalment of the goods or any parts for them) which Libra Seafoods Ltd is to supply in accordance with these Conditions. 'Libra Seafoods Ltd' means Libra Seafoods Ltd (registered in England under number 4601151). 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Libra Seafoods Ltd. 'Contract' means the contract for the purchase and sale of the Goods.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 In these Conditions 'Incoterms' means the interactional rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2. Basis of the sale

2.1 Libra Seafoods Ltd shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of Libra Seafoods Ltd which is accepted by the Buyer, or any written order of the Buyer which is accepted by Libra Seafoods Ltd, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless specifically agreed in writing between the authorised representatives of the Buyer and Libra Seafoods Ltd.

2.3 Libra Seafoods Ltd's employees are not authorised to make any representation covering the Goods unless confirmed by Libra Seafoods Ltd in writing and the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representation (unless such representation is made fraudulently).

3. Price of the Goods

3.1 The price of the Goods shall be Libra Seafoods Ltd's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Libra Seafoods Ltd's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, Libra Seafoods Ltd's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time Libra Seafoods Ltd may alter them without giving notice to the Buyer.

3.2 Libra Seafoods Ltd reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Libra Seafoods Ltd which is due to any factor beyond the control of Libra Seafoods Ltd (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of manufacture variation in freight charges or insurance premiums), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Libra Seafoods Ltd adequate information or instructions.

3.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Libra Seafoods Ltd.

4. Terms of payment

4.1 The Buyer shall pay for the Goods within [seven] days from the date of invoice unless otherwise agreed in writing between the parties.

4.2 Libra Seafoods Ltd shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the Contract.

4.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Libra Seafoods Ltd, Libra Seafoods Ltd shall be entitled to:

- 4.3.1 Cancel the Contract or suspend any further deliveries to the Buyer;
- 4.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Libra Seafoods Ltd) as Libra Seafoods Ltd may think fit (notwithstanding any purported appropriation by the Buyer);
- 4.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 percent per annum above Royal Bank of Scotland base lending rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
- 4.3.4 demand payment in full in respect of any other goods supplied by Libra Seafoods Ltd whether payment in respect of those goods is due or not.

5. Delivery

5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Libra Seafoods Ltd's premises at any time after Libra Seafoods Ltd has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Libra Seafoods Ltd, then by Libra Seafoods Ltd delivering the Goods to that place.

5.2 Notwithstanding the provisions of clause 5.1 delivery may be made by Libra Seafoods Ltd transferring goods to the Buyer's account where Goods are sold ex store or ex cold store delivery. Unless otherwise agreed in writing between Libra Seafoods Ltd and the Buyer all storage and rental charges in respect of Goods so transferred to the Buyer shall be charged to the account of the Buyer with effect from the date of transfer.

5.3 Any dates quoted for delivery of the Goods are approximate only and Libra Seafoods Ltd shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Libra Seafoods Ltd in writing. The Goods may be delivered by Libra Seafoods Ltd in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.4 Delivery/shipment may be made in instalments at the sale option of Libra Seafoods Ltd.

5.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Libra Seafoods Ltd to deliver anyone or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.6 If the Buyer fails to take delivery of the Goods or fails to give Libra Seafoods Ltd adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Libra Seafoods Ltd's fault) then, without prejudice to any other right or remedy available to Libra Seafoods Ltd, Libra Seafoods Ltd may:

- 5.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.6.2 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.

5.7 Notwithstanding the foregoing provisions of this clause 5 where Goods are supplied for export from the United Kingdom, unless otherwise agreed between the Buyer and Libra Seafoods Ltd in writing, the Goods shall be delivered [FOB] (as defined in the Incoterms 2000) the air or sea port of shipment and Libra Seafoods Ltd shall be under no obligation to give notice under 32(3) of the Sale of Goods Act 1979.

6. Risk and Property

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

- 6.1.1 in the case of Goods to be delivered at Libra Seafoods Ltd's premises, at the time Libra Seafoods Ltd notifies the Buyer that the Goods are available for collection; or
- 6.1.2 in the case of Goods sold ex store or ex cold store when delivered in accordance with clause 5.2; or
- 6.1.3 in the case of Goods to be delivered otherwise than at Libra Seafoods Ltd's premises or in accordance with clause 5.2 delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Libra Seafoods Ltd has tendered delivery of the Goods.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until Libra Seafoods Ltd has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Libra Seafoods Ltd to the Buyer for which payment is then due.

6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Libra Seafoods Ltd's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Libra Seafoods Ltd's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Libra Seafoods Ltd for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property to the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Libra Seafoods Ltd shall be entitled at any time to require the Buyer to deliver up the Goods to Libra Seafoods Ltd and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Libra Seafoods Ltd, but if the Buyer does so all moneys owing by the Buyer to Libra Seafoods Ltd shall (without prejudice to any other right or remedy of Libra Seafoods Ltd) forthwith become due and payable.

7. Warranties and liability

7.1 Except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.2 Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.

7.3 Subject to clauses 7.4 and 7.5 any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to Libra Seafoods Ltd within 7 days from the date of delivery. If delivery is not refused, and the Buyer does not notify Libra Seafoods Ltd accordingly, the Buyer shall not be entitled to reject the Goods and Libra Seafoods Ltd shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

7.4 Where Goods are sold ex store or ex cold store they are to be examined and taken away from where they are stored and any complaint shall be lodged within 7 days of the date of collection.

7.5 Goods stated to be sold in the Contract 'as seen' are to be taken with all faults and defects.

7.6 Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Libra Seafoods Ltd in accordance with these Conditions, Libra Seafoods Ltd shall be entitled to replace the Goods (or the part in question) free of charge or, at Libra Seafoods Ltd's sole discretion, upon repayment of the purchase price take back the Goods and Libra Seafoods Ltd shall have no further liability to the Buyer.

7.7 Nothing in these Conditions excludes or limits Libra Seafoods Ltd's liability for death or personal injury caused by its negligence.

7.8 Libra Seafoods Ltd shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law.

7.9 Subject to conditions 7.7 and 7.8 above:-

- 7.9.1 Libra Seafoods Ltd shall not be liable for -
 - (a) any loss of profit, loss of production, financial loss, depletion of goodwill; and
 - (b) any indirect loss, damage, costs or expenses whatsoever; in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and

7.9.2 subject to condition 7.9.1, Libra Seafoods Ltd's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the contract price.

7.10 Any claims for shortages of Goods delivered or any non-delivery shall be notified to Libra Seafoods Ltd within 3 days of delivery or the date when the Goods would in the ordinary course of events have been received. In the event of failure by the Buyer to give notice within the appropriate time, any claim by the Buyer shall be deemed to have been waived.

7.11 Libra Seafoods Ltd shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Libra Seafoods Ltd obligations in relation to the Goods, if the delay or failure was due to any cause beyond Libra Seafoods Ltd's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Libra Seafoods Ltd's reasonable control:

- 7.11.1 Act of God, explosion, flood, tempest, fire or accident;
- 7.11.2 war or threat of war, sabotage, insurrection, act of terrorism, civil disturbance or requisition;
- 7.11.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 7.11.4 import or export regulations or embargoes;
- 7.11.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Libra Seafoods Ltd or of a third party);
- 7.11.6 difficulties in obtaining raw materials, Labour, fuel, parts or machinery; and
- 7.11.7 power failure or breakdown in machinery.

7.12 Libra Seafoods Ltd's liability arising out of the Contract or the supply of the Goods shall not exceed the price of the Goods referred to in the Contract.

8. Insolvency of Buyer

8.1 This clause applies if:

- 8.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 8.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 8.1.4 Libra Seafoods Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

8.2 If this clause applies then, without prejudice to any other right or remedy available to Libra Seafoods Ltd, Libra Seafoods Ltd shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9. Indemnity

The Buyer shall indemnify Libra Seafoods Ltd in respect of any claim for loss, damage or injury to any person or property directly or indirectly occasioned by, or arising from, the sale or processing of the Goods by any party other than Libra Seafoods Ltd.

10. General

10.1 All notices which are required or permitted to be given under these Conditions shall be in writing and shall be sent to the registered office or principal place of business of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class prepaid post and shall be deemed to have been served if by personal delivery when delivered or if by first class prepaid post 48 hours after posting.

10.2 No waiver by Libra Seafoods Ltd of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any competent authority to be invalid or unenforceable in whole or in part holds any provision of these Conditions the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.4 Nothing in these Conditions shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which these Conditions relate and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

10.5 The construction validity and performance of the Contract shall be governed by and construed in accordance with English law and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.