

## DERRYNAFLAN FOODS LTD TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

"Company" means Derrynaflan Foods LTD any associate or subsidiary thereof.

"Customer" means a purchaser of goods from the Company whether as a Wholesaler (being a person intending to resell the goods to retailers) or as a Retailer (being a person intending to resell the goods to the public by direct sale)

### 2. ORDERS

All orders are subject to the price ruling at the date of despatch thereof, and these Terms and Conditions of Sale. Any stipulation or condition in a Customer's order form which conflict with, qualify or negate any of these Terms and Conditions of Sale shall be inapplicable to any order placed with the Company.

If the Customer shall make a default in any payment or becomes insolvent or subject to the Bankruptcy Laws or if the Customer goes into liquidation, the Company may as its options cancel further deliveries. Cancellation of orders accepted by the Company will be accepted only at the Company's discretion and the Company may charge for all work carried out or expenses incurred in relation to the order before acceptance of the cancellation.

### 3. VARIATION OF TERMS

The Company reserves the right to alter any of these Terms and Conditions of Sale by giving notice in writing of any such alteration to the Customer. Such notice may be served by sending it by prepaid ordinary post to the last known address of the Customer and shall be deemed to have been served when such post would in the ordinary course reach its destination notwithstanding the fact that it may not have reached its destination.

### 4. RESERVATION OF TITLE

(a) The property in goods supplied under each contract between the Company and Customer shall remain in the Company until the Company has received payment in full for such goods.

(b) If the Customer shall sell or otherwise dispose of the goods before the payment in full has been made to the Company, the Customer shall in such cases act on his own account and not as an agent for the Company and shall hold monies received by him for such sale or disposals in trust for the Company and shall on request furnish the Company with the names and addresses of the persons to whom such disposals have been made together with all the necessary particulars to enable the Company to recover any outstanding sums due from such persons.

(c) So long as the property in the goods shall remain in the Company the Customer shall hold the goods as bailee for the Company and store the goods so as to clearly show them to be the property of the Company, and the Company shall have the right, without prejudice to the obligations of the Customer,

(d) Nothing in this clause shall confer any right upon the Customer to return the goods. The Company may maintain an action for the price notwithstanding that property on the goods shall have vested in the Customer.

### 5. PASSING OF RISK

(a) Notwithstanding that the property in the goods may not have passed to the Customer, the Customer shall carry all risk of loss of and damage to goods from the time when the goods are delivered to the Customer's premises or to any other place stipulated by the Customer for delivery of the goods either of which events shall constitute delivery to the Customer.

(b) From the time the risk of loss and damage to the goods passes to the Customer and until the Company is paid in full for the goods, the Customer shall

- i) indemnify and keep indemnified the Company against all loss and damage to the goods and against any reduction in the re-sale value thereof below the price to be paid therefore by the Customer;

- ii) insure and keep insured the goods in an amount at least equal to the price to be paid thereof by the Customer and

- iii) hold upon trust for the Company absolutely all proceeds of such insurance

### 6. VALUE ADDED TAX

Customers will be invoiced at the net invoice price as shown in the Company Price List as at the date of despatch. The amount of Value Added Tax at the current rate will be shown on a separate line at foot of the invoice and included in the total. Any Value Added Tax payable in respect of the goods supplied under these conditions will be borne by the Customer.

### 7. QUOTATIONS

Quotations given by the Company are subject to withdrawal at any time prior to receipt of an unconditional order from the purchaser and shall in any event be deemed to be withdrawn unless within 3 days from the date on the quotations. In any event, any order sent by the purchaser shall be accepted at the Company's sole discretion.

### 8. DELIVERY

Any delivery date quoted by the Company is an estimated date only and the Company shall not be liable for any loss or damage occurring through any failure or inability to meet such date.

Delivery shall be at the Company's premises unless otherwise stipulated or agreed in writing by the Company. The Company may charge for delivery at a location other than its premises.

If the purchaser refuses or fails to take delivery of Goods tendered in accordance with a contract the Company shall be entitled to immediate payment in full for the

Goods so tendered. The Company shall be entitled to store at the risk of the purchaser any Goods of which the purchaser fails or refuses to take delivery and the purchaser shall in addition to the purchase price pay on demand all costs of such storage and any additional costs incurred as a result of such failure or refusal.

The Company shall be entitled in the case of short-life Goods immediately to dispose of the same in such manner as the Company may in its absolute discretion determine and in the case of all other Goods the Company shall be entitled after the expiration of one month from the date of failure or refusal to take delivery to dispose of the Goods in such manner as it may in its absolute discretion determine.

Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary, the Company shall not be liable in respect of any shortage of or failure to supply Goods where such shortage or failure is due to riot, war, threat of or preparation for war, explosion, fire, flood, invasion, storm, earthquake, subsidence, epidemic or other natural physical disaster or acts or restraints of government, civil commotion, strikes, lock-outs, stoppages or restraint or withdrawal of labour or other industrial action or shortages of labour or of materials or any acts or events or circumstances beyond the reasonable control of the Company for whatever cause whether partial or general and the Company in such circumstances shall not be liable in respect of any loss to the purchaser (consequential or otherwise) arising therefrom.

We cannot accept responsibility for shortages after signature of the delivery documentation. Such claims will not be entertained. Credit request forms are not a credit note. Credit will only be allowed once passed by the Quality Control Manager and only then once product fault is apparent. Out of date product cannot be accepted by our van sales team members due to food legislation. Delivery to a carrier shall be deemed to be delivery to the purchaser.

### 9. CLAIMS FOR LOSS, DAMAGE OR SHORTAGES

Delivery notes must be checked and signed by the purchaser. Invoices will be deemed proof of delivery of all Goods specified therein. Claims in respect of Loss, Damage or Shortages must be noted on delivery document and confirmed by the purchaser in writing within 2 days of the invoice date.

The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery regardless of the fact that the quantity may be up to 20% more or less than the quantity specified in the contract and in such event the purchaser shall pay for the actual quantity delivered subject to verification to the Company's satisfaction.

In the event of underweight Goods greater than the 20% referred to above the Company shall only be liable to make up the delivery or give a credit note at the Company's absolute discretion.

In the case of non-delivery, the purchaser must within 2 days of the invoice date so advise the Company in writing.

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Prices charged for Goods are those ruling at the date that the contract is made.

All prices quoted are subject to alternation without notice and unless otherwise stated are net of VAT and any other tax or duty.

Where the Company has quoted a price it reserves the right to adjust such quoted prices to take account of increases caused by additions to or increased in the cost of labour, materials, manufacture, transport and ancillary charges of currency fluctuations occurring between the date of quotation and the date upon which the Goods are despatched.

We reserve the right to alter invoices to correct calculation errors.

### 11. PAYMENT

Unless otherwise agreed in writing, all accounts are due for payment in full without any deduction or set-off by the due date as stated on the invoice, if no due date is stated on the invoice, the account is due for payment 20 days after end of month of delivery of the Goods which are subject to the invoice.

Unless otherwise agreed in writing, all sums payable shall be in Euro.

Without prejudice to any other right or remedy, the Company reserves the right to suspend immediately the delivery of further supplies if the purchaser fails to settle account in accordance with this clause or if there is any outstanding liability owed to it by the purchaser or if, in its opinion the purchaser will not be able to meet or is unlikely to be able to meet any existing or future commitments to the Company.

The Company reserves the right to charge compound interest at 3% per month on sums unpaid after the due date of the relevant invoice.

Interest shall be chargeable for the period from the date when the said invoice became due until the payment date.

The Company reserves the right to charge a fee of €10 to the purchaser for every occasion that a payment from the purchaser is returned by the purchaser's bank as unpaid. This will include, but is not limited to, cheques returned from bank stamped "Refer to Sender", direct debits returned due to insufficient funds or "instruction cancelled by customer". These charges will be applied automatically to the purchasers account and will form part of the amount due by the purchaser.

The failure of the purchaser to pay any part of the price of the Goods in due time shall entitle the Company to treat failure as a repudiation of the whole contract relating to such order by the purchaser and to recover damages for such breach of contract. All reasonable costs incurred by Derrynaflan Foods Limited to recover this debt will be payable by the Customer to include Solicitor, Barrister, Private Investigations etc., all Court Costs, including High Court in Ireland, Northern Ireland, England and all other jurisdictions.

Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary, in the event of the purchaser ceasing to take supplies from the Company (for whatever reason) or the Company ceasing to deliver supplies to the purchaser (for whatever reason) then and in such circumstances all sums invoiced or to be invoiced in respect of Goods supplied shall fall due for immediate payment.

### 12. INSOLVENCY OF PURCHASER

If any distress or execution shall be levied on the purchaser's property or if it shall have a receiving order made against it or make an arrangement or composition with its creditors or (being a company) shall have an order made for the appointment of a receiver or liquidator for winding-up (other than for the purpose of reconstruction or amalgamation) the Company shall have the right (without prejudice to any other right or remedy of the Company) forthwith to repudiate all orders placed with it by the purchaser and all amounts outstanding in respect of Goods shall become payable immediately.

### 13. WARRANTIES AND LIABILITY

All Goods supplied by the Company to the purchaser have been subjected to such checks or verification as might be expected of a reasonable supplier in the position of the Company.

All representations, warranties or guarantees given to third parties by the purchaser with reference to the Goods are given entirely at the risk of purchaser regardless as to whether or not such representations, warranties or guarantees are consistent or inconsistent with these Terms and Conditions.

The Company shall not be liable for defects in the Goods caused by the purchaser or any third party for any unsuitability of the Goods unless (in the case of unsuitability) full disclosure has been made by the purchaser.

The Company's liability to the purchaser in respect of or arising out of this contract or in tort (including negligence and breach of statutory duty) or otherwise howsoever arising shall not exceed a sum equal to three times the value of Goods to the Company exclusive of VAT or any other applicable tax duty.

Under no circumstances does the Company accept responsibility of loss of profit, revenues, business goodwill or anticipated savings by the purchaser or for any special indirect or consequential damage of whatsoever nature and howsoever arising.

### 14. WAIVERS

Any waiver of indulgence granted by the Company to the purchaser in respect of its rights under these Terms and Conditions regarding any particular breach or of breaches shall not be deemed an agreement to grant the same indulgence or make the same waiver of the Company's rights in respect of any further or other breach (es).

### 15. FORCE MAJEURE

To the extent that the execution of any order by the Company is hindered delayed or rendered impossible or uneconomical by reason of force majeure (as hereinafter defined) the Company shall as soon as practicable notify the purchaser and thereupon and to that extent the Company is inhibited the Company shall by deemed mutual consent be excused from performance of the contract and (where applicable) the prices shall be adjusted pro rata.

For the purpose of this condition, force majeure shall be deemed to include any cause affecting performance of the contract arising from or attributable to acts or events or circumstances beyond the reasonable control of the Company and in particular, but not exclusively, shall include the following: strikes, lock-outs, stoppages, restraint or withdrawal of labour or other industrial action or shortages of labour, shortages of materials, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic (human or animal) or other natural physical disaster, acts intervention and restraints of government (domestic or other) or other body with due authority.

### 16. ASSIGNMENT

This contract is between the Company and the purchaser as principals. The purchaser may not assign the contract without the prior written consent of the Company. The company may licence or sub-contract any part of its rights and obligations under the contract without the purchaser's consent.

### 17. NOTICES

Any notice or other information required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party given the notice and may be given by pre-paid registered post, special delivery or express delivery service or by telex, or by facsimile transmission or by transmission via a reputable private courier and any notice or information so sent shall be deemed to have been properly and effectively given, if sent by registered post, special delivery, express delivery service or by courier the day delivery is signed for on behalf of the addressee or, if sent by telex, or by facsimile transmission or comparable means of communication, 24 hours after it has been transmitted. Any notice or information sent to the Buyer shall be sent to the address shown on this agreement marked "for the immediate attention of the Company Secretary"

### 18. INTERPRETATION AND COMPETENT JURISDICTION

Any contract shall be governed by and interpreted in accordance with Irish Law and the purchaser submits to the exclusive jurisdiction of the Courts in Ireland. The Company may at its discretion seek to enforce in any court of competent jurisdiction.

For Contractual purposes this contract is deemed to have been made at Derrynaflan Foods Limited's Head Office in County Cork and fall within the Cork Court Jurisdiction. All Parties to this Contract accept that any disputes will be resolved in the court area of County Cork.

Notwithstanding that any provision of these terms and conditions may prove to be illegal or unenforceable, the remaining provisions of these Terms and conditions shall continue in full force and effect.