
CONDITIONS OF SALE

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1 **INTERPRETATION**

1.1 **Definitions**

In these Conditions:

- (a) “Buyer”, the person whose order for the Goods is accepted by the Seller.
- (b) “Goods”, the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.
- (c) “Seller”, Dew Valley Foods Limited of Holycross Road, Thurles, Co Tipperary.
- (d) registered in Ireland under Number 82212.
- (e) “Conditions”, 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 Seller and the Buyer.
- (f) “Contract”, the contract for the purchase and sale of the Goods.
- (g) “Writing”, includes telex, cable, facsimile transmission and comparable means of communication.

1.2 **Governing Law**

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

1.3 **Headings**

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

2 **BASIS OF SALE**

2.1 **Applicability of Conditions**

These Conditions shall form part of all Contracts between the Seller and the Buyer and shall prevail over any inconsistent terms or conditions contained in or referred to in any order or correspondence of the Buyer in writing which is accepted by the Seller or elsewhere and all or any such conditions or stipulations contrary to these Conditions are hereby excluded and extinguished. No variation of these Conditions shall be binding unless accepted by the Seller or the Seller’s authorised representative in Writing.

2.2 **Representations**

The Seller’s Employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.3 **Confirmation in Writing**

Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 **Errors and Omissions**

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.5 **Sellers Imprint**

The Seller reserves the right to attach its imprint to all goods unless advised otherwise. The Buyer shall not remove, deface or alter such imprint or packaging.

2.6 **Representations and Claims**

No representation, claim, specification or price given in any advertising or promotional literature of the Seller shall form part of the Contract (and is hereby excluded therefrom) unless specifically stated in the accepted order or specification for or of the Goods.

3 **QUOTATIONS, ORDERS AND SPECIFICATIONS**

3.1 **Quotations and Offers**

Quotations by the Seller shall not constitute offers to the Buyer. An offer will be constituted by an order from the Buyer, (where applicable, on the basis of the Seller's quotation), and a Contract will be created by the Seller's acceptance of the Buyer's order. Each order from the Buyer will constitute the basis of a separate Contract (but the application of these Conditions to a Contract shall constitute notice to the Buyer of their applicability to all future orders which are accepted).

3.2 **Terms of Order**

The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and/or confirmed and/or quoted by the Seller and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms. The Seller shall be under no obligation to commence production or take into stock any of the Goods or any part thereof until such specifications are delivered to the Seller by the Buyer.

3.3 **Details of Goods**

The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller) subject to such amendment, clarification, addition and deletion as is contained in the Seller's acceptance.

3.4 **Indemnity**

If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the

Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person which results from the Seller's use of the Buyer's specification.

3.5 **Changes in Specification**

The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 **Goods on Approval**

The Seller does not supply services or sell Goods or undertake work on an approval basis and Goods are not returnable nor is the price subject to downward review in the event that the Buyer is not satisfied with the Goods.

4 **DELIVERY**

4.1 **Place of Delivery**

Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place. Delivery shall be deemed to have occurred twenty-four hours after notification to the Buyer that the goods are available for collection (or such longer or shorter period as may be agreed) or, in the case of delivery by the Seller, at the moment when delivery is tendered at the location or carrier specified in the Contract.

4.2 **Delivery by Instalments**

In the case of delivery by instalments, each delivery shall be regarded as a separate and independent Contract. The Seller reserves the right to make partial deliveries, and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4.3 **Force Majeure**

In the event of an act of God, governmental direction or other authoritative direction or intervention, strikes, lock-outs or other industrial civil or international unrest (whether the same affects the Seller, his suppliers or agents) or any other force majeure of whatsoever nature beyond the control of Seller, the Seller shall not be liable for any delay in delivery, non-delivery, destruction or deterioration of all or any part of the goods or for any other default in the performance of this contract arising therefrom and the Seller shall have the option either to cancel this contract either wholly or partially or to extend the time for delivery during such period as said circumstances or any of them shall continue. In the event of such cancellation by the Seller, or any such postponement the Buyer shall have no claims whatsoever against the Seller.

4.4 **Delay**

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

4.5 **Cancellation of Order**

No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges' and expenses incurred by the Seller as a result of cancellation.

4.6 **Expenses on Cancellation**

In the event of the Buyer or his agents giving delivery instructions and afterwards finding it necessary to cancel them such cancellation can only be accepted on the terms that the Buyer accepts full responsibility to the Seller for all expenses incurred by the Seller up to the time of cancellation. The Seller's estimate of expenses incurred shall be final.

4.7 **Licences and Quota Allocations**

If the Buyer fails to obtain any necessary import licence or quota allocation in time for delivery by the Seller, the Seller shall have the right either to postpone delivery or to cancel the Contract wholly or partially without being under any liability whatsoever to the Buyer. The Buyer shall be liable for any losses or expenses that are incurred by the Seller as a result of such failure.

4.8 **Failure to take Delivery**

If the Buyer fails to take delivery of the Goods or fails to give the Seller 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 the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:-

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

4.9 **Inspection of Goods before Delivery**

If the Goods are to be manufactured or altered by the Seller after the Contract but prior to delivery to the Buyer the Buyer agrees to inspect the goods on delivery and shall endorse acceptance of the same on the delivery docket accompanying the Goods.

4.10 **Bankruptcy of Buyer**

If the Buyer becomes bankrupt or enters into an arrangement with his creditors or if execution is levied against him or (if a company) an order is made or a resolution is passed for a winding up of the Buyer or if a receiver is appointed over the property of the Buyer or if an examiner or

administrator is appointed to the Buyer or if the Buyer becomes insolvent or if the Buyer is in breach of any Contract with the Seller, the Seller may stop any Goods in transit and suspend further deliveries and may determine any Contract with the Buyer without prejudice to any existing claim. Nothing in this Clause 4.11 and no action taken hereunder shall prejudice any other right of the Seller.

4.11 **Inspection of Goods on Delivery**

The Buyer shall inspect the Goods immediately on delivery and any shortages, defects or breakages or any matter or thing by virtue of which the Goods are alleged not to be in accordance with the Contract must be noted on the delivery docket and any defective Goods must be held for inspection. If the Buyer shall fail to give such notice the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.

5 **PRICES**

5.1 **Relevant Price**

The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from (Ireland], the Seller's published export price list shall apply. All prices quoted are valid for 14 days only, after which time they may be altered by the Seller without giving notice to the Buyer.

5.2 **Basis of Price**

Except as otherwise stated in any price list of the Seller or unless otherwise agreed in Writing between the Buyer and the Seller, all prices are strictly net on an ex-works basis. Where the Seller agrees to deliver the goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport (packaging and insurance]. Customs duties, consular fees and other taxes, duties or fees charged in accordance with the laws or regulations of the country of destination or any other country through which the goods are transported as well as any costs connected therewith shall be borne by Buyer. Seller shall be entitled to add to the price agreed upon the amount of any tax or other governmental charges which Seller must pay in respect of the goods (including without limitation value added tax and import duties) such taxes or governmental charges now in effect or as may hereafter be imposed or any increase therein prior to delivery.

5.3 **Increase in Price**

The Seller reserves the right, by giving notice to the Buyer at any time before delivery of the Goods, to increase the price of the Goods to reflect any increase in the cost to the Seller of completing' the Contract which is due to any factor beyond the control of the Seller (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour or materials) any change in delivery dates, quantities or specifications for the Goods which is represented by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5.4 **Containers and Pallets**

The cost of any pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

6 PAYMENT

6.1 Invoice for Payment

Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

6.2 Method of Payment

All payments are due in cash or by cheque. The Seller reserves the right in respect of every payment to decline to accept payment by cheque and to require instead payment by (at the Seller's option) banker's draft, cash, or credit transfer.

6.3 Period for Payment

The Buyer shall pay the price of the Goods without deduction within 28 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall of the essence of the Contract. Receipts for payment will be issued only on request.

6.4 Failure to Pay

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

- (a) cancel the Contract or suspend any further deliveries to the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other Contract between the Buyer and the Seller as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above the Clearing Bank base 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).

6.5 Full Payment

The Buyer shall not make any set-off against the price of the Goods or raise any counterclaim in diminution of the price due but must pay the price and all other charges due on the due date or dates for payment agreed. Any complaints regarding short delivery, alleged defects or faults in the goods, failure to deliver in accordance with the terms of the Contract, or other complaint shall leave the Buyer's obligation to pay the entire price for the Goods and all other charges due under the Contract intact.

6.6 Resale of Goods

The Buyer warrants and agrees as a fundamental term of the supply of the Goods that it will not offer for sale or require or induce or attempt to require or induce any person (whether directly or indirectly) to resell or offer for resale the Goods or to advertise or otherwise specify resale prices for the Goods at less than the net invoice price of the Goods (as such expression is defined in the Restrictive Practices (Groceries) Order, 1987).

7 RISK AND PROPERTY

7.1 Retention of Title

The property in the Goods shall remain with the Seller until such time as all sums owing to the Seller in respect of the Goods have been paid to the Seller.

7.2 Selling on of Goods

The Buyer shall be entitled to sell the Goods and pass the property in same to third parties during the normal course of the Buyer's business until the happening of any of the events set out in Clause 7.5 below and the Buyer as trustee for the Seller shall account for all sums owing to the Seller in respect of the Goods. The Buyer may not offer or charge the Goods as security for the performance by the Buyer of any of its obligations to any third party and may not incorporate the Goods in any process nor mix them with other goods. The Buyer shall hold on trust for the Seller that portion of the proceeds of sale of the Goods which represents the amount due to the Seller in respect thereof, and shall maintain a separate account of all sums so received, giving particulars thereof to the Seller on request.

7.3 Withdrawal of Authority to sell

On the happening of any of the events set out in Clause 7.5 below the authority of the Buyer to sell the Goods shall be deemed withdrawn. All the Goods the property of the Seller shall be immediately delivered to the Seller and if the Buyer fails to do so forthwith and the Seller by its servants or agents shall have the right during business hours to enter with or without recourse to law on the lands or buildings of the Buyer to take possession of the Goods.

7.4 Sale of Buyer's Business

The authority hereby granted to the Buyer to pass property in the Goods shall not extend to any sale of the Goods in the course of a sale of the entire or substantially the entire of the Buyer's business or undertaking or pursuant to a sale of the Buyer's stock-in-trade preparatory to a cessation by the Buyer of business or of trade in goods similar to the Goods.

7.5 Relevant Events

The events hereinbefore referred to are:-

- (a) the Buyer makes a voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administrative order or goes into liquidation {otherwise than for the purposes of amalgamation or reconstruction} or;
- (b) an encumbrancer takes possession or a receiver is appointed of any of the property or asset of the Buyer; or
- (c) the Buyer ceases or threatens to cease to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mention above is about to occur in relation to the Buyer and notify the Buyer accordingly
- (e) any notice to the Buyer or the Seller of the appointment of an Examiner to the Buyer under the provisions of the Companies (Amendment) Act, 1990.
- (f) notice being given by the Seller to the Buyer at its last known address determining the Buyer's right to use the Goods or to pass title or property thereto.

7.6 **Risk**

Notwithstanding the foregoing the Goods shall be at the risk of the Buyer upon:-

- (a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- (b) in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

7.7 **Storage of Goods**

The Buyer shall store any Goods held by the Buyer in such manner that such Goods are clearly identifiable as the property of the Seller and shall maintain adequate insurance in respect of any of the Goods for which the Buyer has not paid the Seller while such Goods are stored on the Buyer's premises.

7.8 **Rescission**

If the Buyer becomes bankrupt or enters into an arrangement with its creditors or if execution is levied against him or (if a company) a petition be presented or an order is made or a resolution is passed for a winding up or if a receiver is appointed over the property of the Buyer or if an examiner is appointed to the Buyer or if the Buyer becomes insolvent or if the Buyer is in breach of any Contract with the Seller, the Seller may stop any Goods in transit and suspend further deliveries and may determine any Contract with the Buyer without prejudice to any existing claim. Nothing in these Conditions shall prejudice any other right vested in the Seller.

8 **COMPLAINTS, WARRANTY AND LIABILITY**

8.1 **Effect of Complaints or Claim**

Any complaints or claim made in respect of Goods alleged to be defective may result in the suspension of further deliveries of Goods by the Seller until such claim or complaints have been investigated or finally determined and in any such event, any applicable delivery dates may be delayed accordingly and the Seller shall have no liability as a result of any such delay.

8.2 **Sellers Liabilities**

Notwithstanding any of the provisions hereof the Seller's liability in respect of any Goods supplied to the Buyer proved to be defective shall be limited to giving to the Buyer a reasonable credit or allowance in respect of such defective Goods or, at the Seller's option, to replace such Goods at such address as the Buyer and the Seller may mutually agree but under no circumstances shall the liability of the Seller exceed the invoice price of the Goods supplied under any Contract.

8.3 **Basis of Claim**

Any claim in respect of Goods alleged to be defective or otherwise howsoever the subject of a Contract must be made in Writing to the Seller within a period of 3 days after delivery and the alleged defective Goods must be available for inspection by the Seller. Any claim for loss or damage to Goods in transit shall only be considered if pursuant to the delivery terms of the contract the Goods were then at the risk of the Seller and if such claim shall be made in

writing to the Seller within a period of 3 days from when in the ordinary course of events Goods should have been delivered.

8.4 Limitation of Liability

No liability in respect of Goods alleged to have been lost, undelivered, pilfered or damaged in transit shall be accepted by the Seller where the risk in the Goods shall have already passed to the Buyer before the alleged incident or where the Buyer's carrier has been given a receipt for the Goods. No Goods shall be returned to the Seller save with its consent and the Seller's certificate as to the quality and conditions of the Goods so returned shall be final and binding.

8.5 Non-Liability of Seller

In no case shall the Seller be liable for:

- (a) any adverse effects resulting from application to the Goods of any process, operation or treatment unless specifically recommended or agreed to by the Seller; or
- (b) any expenditure incurred by the Buyer in respect of Goods alleged to be defective; or
- (c) any loss of profit or any consequential or indirect loss or damage of any kind to the Buyer howsoever caused; or
- (d) any Goods which have been processed in any way by the Buyer or damaged after the risk in the Goods has passed to the Buyer.

8.6 Implied Conditions

No condition is made or to be implied nor is any warranty to be given or implied as to the life or wear of any of the Goods supplied or that they shall be suitable for any particular purpose or for use under any specific conditions notwithstanding that such purpose or condition are made known to the Seller and no terms, conditions, guarantees, representations or understandings made to the Buyer with or by any of the Sellers salesmen, agents, employees or representatives shall be binding unless confirmed in Writing by the Seller.

8.7 Manufacturers Guarantee

In the event of the Goods being sold to the Buyer with a "guarantee" (as defined in Section 15 of the Sale of Goods and Supply of Services Act 1980) from the original manufacturer or supplier thereof the Seller undertakes no liability to the Buyer for the observance of the terms of such guarantee.

8.8 Buyer not Consumer

The Buyer represents to the Seller that the Buyer buys the Goods from the Seller in the course of a business of selling Goods of the class ordered or for the purpose of a trade or undertaking carried on by the Buyer and that the Buyer does not deal with the Seller as a "Consumer" within the meaning of Section 3 of the Sale of Goods and Supply of Services Act, 1980.

8.8 Limitation of Liability

Where the Buyer is not a consumer within the meaning of Section 3 of the Sale of Goods & Supply of Services Act, 1980, liability in respect of any Goods supplied to the Buyer proved to be defective shall be limited to the purchase price of such Goods actually paid under the Contract.

8.9 Purchase by Description

In the event of the Buyer purchasing the Goods by description the provisions of Section 13 of the Sale of Goods Act, 1979 (which implies the term that the Goods shall correspond with their description) shall not apply to the Contract.

8.10 Merchantable quality

The Seller makes and gives no warranty condition or representation in regard to the Goods save as herein expressly stated and it shall not be a condition of this contract that the Goods supplied hereunder are fit for the purpose for which the Buyer wants them, whether or not this purpose has been made known to the Seller and/or are of merchantable quality. The Buyer accepts that prior to agreeing to purchase the Goods hereunder he has satisfied himself as to their fitness for his purpose and as to their merchantable quality in regard to the use for which he requires them and has not relied upon the Seller's skill, judgment or representations, if any, before so satisfying himself.

8.11 Purchase by Sample

In the event of the Buyer purchasing the Goods by sample the provisions of Section 15 Sub-Sections (2) & (3) of the Sale of Goods Act, 1979 (which imply that the bulk of the goods shall correspond with the sample in quality and that the Buyer has had a reasonable opportunity of comparing the bulk with the sample) shall not apply to the Contract. In the event of the Buyer purchasing the goods by sample the provisions of Section 15 Sub-Section (c) of the Sale of Goods Act, 1893 (which implies that the sample and the goods are free from defects which are not apparent on a reasonable examination) shall not apply to this contract.

8.12 No Guarantee

The Seller gives no guarantee as defined in Section 15 of the Sale of Goods and Supply of Services Act, 1980 in relation to the Goods the subject matter of this contract. In the event of the Goods being sold under this contract being sold with a guarantee from the original manufacturer thereof the Seller undertakes no liability to the Buyer for the observance of the terms of such guarantee. This Clause is for the express provision of limiting the Seller's liability under Section 17 Sub-Section 1 of the Sale of Goods & Supply of Services Act, 1980.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 Patents Trademarks and Designs

The Buyer shall be responsible for any infringement with regard to patent, utility, model, trademark, design, copyright or other intellectual property right in any country without exception when such infringement is due to the Seller having followed the design or instruction furnished by the Buyer. The Buyer shall be liable for and indemnify the Seller against all loss, damages and expenses suffered or incurred by the Seller as a result of any such infringement. In case any dispute and/or claim arises in connection with the above infringement, the Seller reserves every and all rights to cancel and make null and void this contract at its discretion and hold the Buyer responsible for any loss caused thereby to Seller. Nothing herein contained shall be construed as transferring any patent, utility model, trademark, design or copyright in the Goods or in any product that the Goods can produce and all such rights are to be expressly reserved to the true and lawful owners thereof.

9.2 **Information, Drawings and Other Documents**

All information concerning weights and dimensions, drawings, explanations, descriptions and illustrations submitted by the Seller are to be considered as approximate only and are not binding.

9.3 **Exclusive Ownership**

The Seller will retain the exclusive ownership and all copyrights in respect of any drawings and other documents. Drawings and other documents must not be made accessible to third parties without the Seller's consent and shall be returned, if so requested.

10 **EXPORT TERMS**

10.1 **Inco Terms**

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

10.2 **Applicability**

Where the Goods are supplied for export from Ireland, the provisions of this Section shall, (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

10.3 **Compliance with legislation**

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination or for the payment of any duties thereon.

10.4 **Means of Payment**

Payment of all amounts due to the Seller shall be made by credit transfer to the Sellers Bank Account.

10.5 **Duties and Taxes**

Customs duties, consular fees and other taxes, duties or fees charged in accordance with the laws or regulations of the country of destination or any other country through which Goods are transported as well as any costs connected therewith shall be borne by Buyer.

11 **GENERAL PROVISIONS**

11.1 **Arbitration**

Any dispute or difference arising out of or relating to these conditions or any contract or to any breach thereof which cannot be settled amicably without undue delay by the interested parties shall be referred to the arbitration in [Dublin] of an arbitrator to be appointed by the parties hereto or in default of appointment by the President for the time being of the Incorporated Law Society of Ireland and subject to the provisions of the Arbitration Acts 1954 and 1980 or any

statutory modification thereof for the time being in force. The award of such arbitrator shall be final and binding on both parties.

11.2 **Applicable Law**

This contract shall be governed by and construed in all respects (including the formation thereof and the performance thereunder) in accordance with the laws of the Republic of Ireland.

11.3 **Notices**

Any notice required to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant times have been notified pursuant to this provision to the party giving the notice.

11.4 **Group Companies**

The Seller is a member of the group of companies whose holding company is Dew Valley Foods Limited and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.