

**TERMS AND CONDITIONS OF SALE OF  
COLLINS (SEAFOODS) LIMITED (2010 EDITION)**

**1. INTERPRETATION**

1.1. In these Terms:

“**Buyer**” means the person who offers to purchase Goods from the Seller based on the Seller’s Written quotation for the sale of the Goods (such offer being accepted by the Seller) or whose Written order for the Goods is accepted by the Seller;

“**Goods**” means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Terms;

“**Seller**” means Collins (Seafoods) Limited (registered in England and Wales under number 02031624);

“**Contract**” means the contract between the Buyer and the Seller for the sale and purchase of the Goods pursuant to these Terms;

“**Terms**” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“**Writing**” and any similar expression, includes facsimile transmission and comparable means of communication, including electronic mail.

1.2. A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation.

**2. BASIS OF THE SALE**

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Buyer’s offer to purchase Goods based upon the Seller’s Written quotation (if accepted by the Seller), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

- 2.3. 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 any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4. 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 or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on 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.
- 2.5. 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.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1. 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 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.
- 3.2. The quantity, quality and description of the Goods and any specification for them shall be as set out in the Buyer's offer to purchase Goods based upon the Seller's quotation (if accepted by the Seller) or the Buyer's order (if accepted by the Seller).
- 3.3. 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 at the discretion of the Seller on terms that the Buyer shall indemnify the Seller in full for the delivery charge of the Goods in the event that the Goods are already in transit before the Buyer cancels the order.

### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the Seller's quoted price when the order is made. The price can vary from time to time and order to order. All prices quoted are valid only for the same day on which they are given and to secure the price quoted an offer to purchase Goods by the Buyer must be made and have been accepted by the Buyer before 5pm on that day.
- 4.2 Except as otherwise stated in the Seller's oral or Written quotation, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given

by the Seller are given on the basis of delivery of the Goods by the Seller at the Buyer's premises (within the United Kingdom and Ireland at the address provided in the quotation and accepted by the Seller as the delivery address) or collection by the Buyer (as soon as the Seller notifies the Buyer that the Goods are ready for collection) at the Seller's premises, and where the Seller agrees to deliver the Goods otherwise than at the Buyer's premises (or at an address other than as set out in the Seller's quotation), the Seller's may at its discretion charge for transport, packaging and insurance for which the Buyer shall be liable.

## 5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may 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.
- 5.2 The Buyer shall pay the price of the Goods within 28 days of the date of the Seller's invoice, and the Seller 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 of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may at its discretion:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the Seller's discretion either at:-
    - (a) the rate of 2% per cent per annum above Royal Bank of Scotland Bank plc base rate from time to time; or .
    - (b) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

## **6 DELIVERY**

- 6.1 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 (subject to the provisions of clause 4.2 of these Terms).
- 6.2 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 however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date by prior agreement with the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms 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.
- 6.4 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 limiting any other right or remedy available to the Seller, the Seller may:
- 6.4.1 store the Goods until actual delivery and at the Seller's discretion charge the Buyer for the reasonable costs (including insurance) of storage (such storage to be governed by clause 8 of these Terms); or
  - 6.4.2 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].

## **7 RISK AND PROPERTY**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 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
  - 7.1.2 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, the time when the Seller has tendered delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer from the Seller until the Seller 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 the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller'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 the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 7.4 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), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 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 the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 Until such time as the property in the Goods passes to the Buyer the Buyer shall notify the Seller immediately if it becomes subject to any of the events listed in clause 10.

## 8 **STORAGE**

- 8.1 If the Seller has agreed to store the Goods for the Buyer then the Seller may invoice the Buyer for the price of the Goods at any time after the order for the Goods has been made and clause 5.1 shall be modified accordingly.
- 8.2 Invoices for storage will be issued weekly in arrears and shall be payable within 28 days of the date of the invoice. The time for payment shall be of the essence. The provisions of clause 5.3 shall apply mutatis mutandis.
- 8.3 Once the agreed period of storage has expired then the Buyer must make arrangements to collect the Goods, or if the Seller agrees, the Seller will continue to store the Goods for the Buyer for an agreed period of time at a price to be notified by the Seller to the Buyer. The Buyer must provide the Seller with 24 hours notice of its intention to collect the Goods and must provide full particulars of which Goods it is collecting. Collection can only be made between the hours of 8am and 2pm, and only on a week day (Monday to Friday) but excluding public holidays.

- 8.4 Once property in the goods has passed to the Buyer, the Seller shall store the Goods separately from all other goods in its possession and marked in such a way that they are identified as the Buyer's property
- 8.5 Risk of damage to or loss of the Goods shall pass to the Buyer on expiry of the agreed period of storage and the provisions of clause 7.1 shall be modified accordingly
- 8.6 The Buyer shall be responsible for ensuring that any Goods stored by the Seller are used with reference to the earliest best before date and the Seller shall not be liable for the Buyer's failure to do this, or for the Buyer's failure to take delivery of the Goods before their best before date.

## 9 **WARRANTIES AND LIABILITY**

- 9.1 Subject as expressly provided in these Terms, and except where the Goods are sold directly by the Seller 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.
- 9.2 A 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 the Seller as soon as possible from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller 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.
- 9.3 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may collect and replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods and collect the Goods, or agree with the Buyer a revised charge for the Goods. In each case the Seller shall have no further liability to the Buyer.
- 9.4 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special

or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

9.5 The Seller 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 the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

9.5.1 Act of God, explosion, flood, tempest, fire or accident;

9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.5.4 import or export regulations or embargoes;

9.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

9.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.5.7 power failure or breakdown in machinery.

## 10 **INSOLVENCY OF BUYER**

10.1 This clause 10 applies if:

10.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.1.5 the financial position of the Buyer deteriorate to such an extent that in the opinion of the Seller the capability of the Buyer to fulfil its obligations under the Contract have been placed in jeopardy.

10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may 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.

## 11 **GENERAL**

- 11.1 A notice required or permitted to be given by either party to the other under these Terms 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 giving the notice.
- 11.2 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 11.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.5 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.