

1. **DEFINITIONS AND INTERPRETATION**
- 1.1 In these terms and conditions (unless the context otherwise requires) the following definitions apply:
- Buyer:** the person who accepts a quotation from, or whose order is accepted by, the Seller for the sale of goods;
- Conditions:** these terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
- Confidential Information:** any correspondence entered into between the Seller and the Buyer, the Seller's current and future business plans and strategies, and all other information relating or belonging to the Seller or any member of the VION Group which would reasonably be considered confidential;
- Contract:** these Conditions together with the relevant Order;
- Goods:** any goods (including any instalment or any parts of or for them) agreed to be supplied by the Seller to the Buyer;
- Order:** any written quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, for the sale and supply of Goods;
- Relevant Requirements:** all applicable laws, statutes, regulations, and codes relating to anti-bribery and corruption including, without limitation, the Bribery Act 2010.
- Seller:** VION Food UK Limited (registered in Scotland under number SC220000), 7 Bain Square, Kirrton Campus, Livingston, EH54 7DQ, or, if different, the member of the VION Group which has issued the quotation or accepted an order, as the case may be, for the Goods; and
- VION Group:** VION Food UK Limited and any holding company or subsidiary of VION Food UK Limited and any subsidiary of any such holding company. "Holding company" and "subsidiary" in this Contract means as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsection 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.
- 1.2 Any reference in these Conditions to any provisions 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.
2. **APPLICATION OF TERMS**
- 2.1 Subject to any variation under condition 2.4, these Conditions are the only terms and conditions upon which Seller is prepared to deal with the Buyer and they shall govern the sale of Goods by the Seller to the Buyer to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods shall be deemed to be an offer by Seller to sell or an offer by the Buyer to buy (as the case may be) Goods subject to these Conditions. No order for Goods by the Buyer shall be deemed to be accepted until the Seller accepts the order either expressly by giving notice of acceptance or impliedly by delivering the Goods to the Buyer in whole or in part. Acceptance of any order for Goods from the Buyer shall not oblige the Seller to accept any subsequent order from the Buyer.
- 2.3 No terms or conditions endorsed upon, delivered with, or contained in the Buyer's order or acknowledgement or acceptance of an order, specification or similar document shall form part of the Contract and the Buyer waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all sales of Goods to the Buyer and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller.
3. **PRICE OF GOODS AND PAYMENT**
- 3.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery. All prices are expressed exclusive of VAT (which will be due and payable by the Buyer in addition).
- 3.2 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.
- 3.3 The Buyer shall pay the price of the goods within 7 days of receipt of the Seller's invoice notwithstanding that actual delivery may not have taken place. The time of payment of the price shall be of the essence of the Contract. Receipts for payment shall be issued only upon request.
- 3.4 If the parties agree that the Seller will be responsible for shipping the Goods to the Buyer, the Buyer will reimburse the Seller on demand for any and all transportation, insurance and delivery costs incurred by the Seller in delivering the Goods to the Buyer.
- 3.5 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 may: (a) cancel the Contract and/or suspend any further deliveries to the Buyer; and/or (b) appropriate any payment made by the Buyer to such of the Goods or goods supplied under any other contract between the Buyer and the Seller as the Seller may think fit and, notwithstanding any purported appropriation by the Buyer, charge the Buyer interest both before and after any judgement on the amount unpaid at the rate of 4% above the base lending rate of the Royal Bank of Scotland plc from time to time until payment in full is made (part of a month being treated as a full month for the purpose of calculating interest).
- 3.6 The Buyer shall make all payments due under the Contract in full 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.
4. **DELIVERY**
- 4.1 Delivery of the Goods shall be made by the Seller delivering Goods to the place specified in the Order or, if the Buyer collects the Goods, at the date of collection, whichever is earlier.
- 4.2 The Seller may deliver or make available the Goods by separate instalments. Where this is the case, each instalment shall be deemed to be a separate Contract and no cancellation of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.3 Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Seller shall not be liable for any delay in delivery of the Goods howsoever caused and, subject to the other provisions of these Conditions, the Seller accepts no liability for any loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, waste of management or office time or for any indirect or consequential loss or damage of any kind however arising caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence). The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Delay in delivery shall not entitle the Buyer to terminate or rescind the Contract unless (subject always to condition 6.9) such delay exceeds thirty (30) days.
- 4.4 If for any reason the Buyer fails to 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, the Seller may store the Goods at the Buyer's risk until actual delivery, whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
5. **RISK AND PROPERTY**
- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer: (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 (c) if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.
- 5.2 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 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.
- 5.3 Until such times as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's agent 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. Until that time the Buyer shall be entitled to re-sell or use the Goods in the ordinary course of its business (acting always on its own account as principal in any such re-sale) but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured.
- 5.4 Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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 re-possess the Goods.
- 5.5 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy to the Seller) forthwith become immediately due and payable.
- 5.6 It is a material and essential condition of the Contract that the Buyer at all times ensures that the Goods supplied are stored after delivery at a maximum temperature of 2 degrees centigrade for chilled fresh goods and minus 18 degrees centigrade for frozen goods and under such additional conditions of storage as may be notified to the Buyer by the Seller from time to time.
6. **WARRANTIES AND LIABILITY**
- 6.1 **SUBJECT TO CONDITION 6.3, THE TOTAL LIABILITY OF THE SELLER FOR: (A) ANY BREACH OF CONTRACT; AND/OR (B) TORT/DELICT OR ANY COMMON LAW OR ANY STATUTORY DUTY, INCLUDING NEGLIGENCE IS LIMITED TO THREE TIMES THE PRICE OF THE GOODS SUPPLIED UNDER THE CONTRACT OR £10,000 WHICHEVER IS THE LESSER.**
- 6.2 The Seller shall not be liable to the Buyer in respect of any Goods which have been altered, used, or sold on by the Buyer or in which a defect has arisen as a result of a failure by the Buyer to follow the Seller's oral or written instructions as to the storage or use of the Goods or good trade practice.
- 6.3 Nothing in these Conditions will or is intended to exclude, or limit in any way, the Seller's liability: (a) for death or personal injury caused by the Seller's negligence; (b) under section 2(3) of the Consumer Protection Act 1987; (c) for fraud or fraudulent misrepresentation; or (d) for any matter for which it would be illegal for the Seller to exclude, or attempt to exclude, its liability.
- 6.4 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.
- 6.5 **BECAUSE THE CIRCUMSTANCES OF THE BUYER ARE NOT FULLY KNOWN TO THE SELLER, THE SELLER EXCLUDES ALL LIABILITY FOR (A) LOSS OF INCOME OR REVENUE; (B) LOSS OF BUSINESS; (C) LOSS OF PROFITS OR CONTRACTS; OR (D) LOSS OF ANTICIPATED SAVINGS; OR (E) LOSS OF DATA, WASTE OF MANAGEMENT OR OFFICE TIME; OR (F) FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND HOWEVER ARISING AND WHETHER CAUSED BY BREACH OF CONTRACT, TORT/DELICT OR OTHERWISE (INCLUDING NEGLIGENCE OR BREACH OF ANY COMMON LAW OR STATUTORY DUTY) BY THE SELLER, EVEN IF FORESEEABLE.**
- 6.6 **THE BUYER SHALL COMPLY WITH ALL LAWS, RULES AND REGULATIONS APPLICABLE TO THE RE-SALE OF THE GOODS AND SHALL INDEMNIFY THE SELLER FROM AND AGAINST ALL LOSSES, COSTS (INCLUDING WITHOUT LIMITATION ALL LEGAL EXPENSES) CLAIMS AND CAUSES OF ACTION SUFFERED BY, INCURRED BY OR MADE UPON THE SELLER ARISING OUT OF THE RE-SALE OF THE GOODS BY THE BUYER.**
- 6.7 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 the required specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 3 days from the date of delivery. 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 defects or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 6.8 Where any valid claim in respect of any of the Goods, 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 Conditions the Seller may 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 (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 6.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of any 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 prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control: Act of God, explosion, flood, tempest, fire or accident; War, or threat of war, sabotage, insurrection, civil disturbance or acquisition; Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; Import or export regulations or embargoes; Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); Difficulties in obtaining raw materials, labour, fuel, parts or machinery; Power failure or breakdown in machinery.
- 6.10 The Seller is a member of the VION Group and accordingly the Buyer agrees that any other member of the said VION Group may deduct any sums due and payable to the Seller but unpaid by the Buyer from sums due by said member of the VION Group to the Buyer.
7. **CONFIDENTIALITY**
- 7.1 The Buyer shall keep, and shall ensure that each of its employees keeps, in strict confidence (and shall not disclose to any third party without the Seller's prior written consent) any Confidential Information disclosed to it by or on behalf of the Seller or which comes to its attention, whether before or after the date of the Contract unless required to do so by law or court order. The Buyer will inform the Seller of any disclosure made pursuant to this condition 7.1 and, wherever possible, shall do so in advance.
8. **INSOLVENCY OF BUYER**
- 8.1 If 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 and for the purposes of amalgamation or re-construction) or an insolvency practitioner takes possession or a Receiver is appointed of any of the property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business, or the Seller reasonably apprehends any of the events mentioned above or any event similar to such an event which is about to occur in relation to the Buyer and notifies the Buyer accordingly then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract and/or suspend any pending or 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. **GENERAL**
- 9.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the VION Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 9.2 The Seller may assign, novate, transfer, sub-contract, delegate or charge or deal in any other manner the Contract or any part of it (or any rights or obligations under or in connection with it) to any person, firm or company. The Buyer will not (and will not seek to) assign, novate, transfer, sub-contract, delegate or charge or deal in any other manner, the Contract or any part of it (or any rights or obligations under or in connection with it) without the prior written consent of the Seller.
- 9.3 The relationship between the Seller and the Buyer will be that of an independent contractor. The Buyer will have no authority to hold itself out as an agent of the Seller and will not make any statements, representations or commitments of any kind or take any other action which will be binding upon the Seller without the Seller's prior written consent.
- 9.4 Any notice required/permitted to be given by one party to the other under these Conditions shall be in writing addressed to that other party at its registered office, principal place of business or such other address as may have been notified by one party to the other in writing for this purpose.
- 9.5 The Contract represents the complete agreement between the Seller and the Buyer in relation to the sale of Goods. All preceding correspondence, either written or oral and express or implied conditions, or agreements are hereby expressly excluded from this contract, the acceptance of which is indicated by both parties on execution of this contract.
- 9.6 No addition, amendment, modification, or waiver of any term of this Contract will be effective unless in writing and signed by or on behalf of both parties.
- 9.7 No failure or delay by either party in exercising any right or remedy under the Contract will operate as a waiver of such right or remedy nor will any single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 9.8 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question, where possible, shall not be affected thereby.
- 9.9 The Buyer shall at all times comply with the Relevant Requirements, shall have and maintain appropriate policies and procedures to ensure compliance with the Relevant Requirements (which it shall enforce where appropriate) and shall immediately notify the Seller of any demand for any undue financial or other advantage of any kind received by it in connection with the Contract.
- 9.10 The Contract, and all non-contractual disputes or claims between the parties relating to the subject matter hereof, will be governed by the law of England and Wales and the parties agree to submit to the jurisdiction of the English courts.