

CONDITIONS OF SALE v3.1

Triangle Wholefoods Collective Ltd t/a Suma Foods ('the Company')

1 Status of Conditions:

1.1 These conditions are the only conditions on which the Company will contract for the sale of goods or services and no other conditions shall apply save for those implied by law unless specifically agreed in writing by an authorised official of the Company.

2 Inspection :

2.1 The Buyer shall carry out a thorough inspection of the goods which are the subject of the contract ('the Goods') within 5 working days after their delivery and shall give immediate written notification to the Company of any defects which a reasonable examination would have revealed.

3 Delivery :

3.1 Delivery & risk of the Goods shall take place at the Buyers place of business. The Buyer shall provide at the delivery point adequate and appropriate equipment and manual labour for unloading the Goods at the Buyers liability and expense.

3.2 Any time or day quoted by the Company for delivery of all or any of the Goods is an estimate only. Time of delivery shall not be of the essence and shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time.

3.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.

3.4 The Company reserves the right to deliver by instalments and to treat each instalment as a separate and distinct contract.

3.5 If, for any reason the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions, documents, licences or authorisations at the time notified by the Company, then:-

3.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

3.5.2 the Goods shall be deemed to have been delivered; and

3.5.3 the Company may at its discretion either store the Goods and charge the Buyer for all related costs and expenses (including without limitation, storage and insurance); or sell the Goods at any time at the best price readily obtainable and (after deducting all related costs and expenses) account to the Buyer for the excess over the Contract price or charge the Buyer for any shortfall below the price under the Contract.

3.6 In the event of short delivery, loss or damage:-

3.6.1 notification of short delivery must be made in writing to the Company within 7 days of the receipt of the Goods and the Company must be given an adequate opportunity to inspect and where necessary to re-weigh or re-count;

3.6.2 notification of non-delivery must be made in writing to the Company within seven days after the date of the Company's invoice;

3.6.3 in the event of any notification being given in accordance with the above, and the Company in its reasonable opinion considering that there is a case of non-delivery or short delivery, the liability of the Company shall be limited to replacing the Goods within a reasonable time or issuing a credit note pro rata against any invoice raised for such Goods.

3.6.4 In the absence of notification as above, the Company shall not be liable for any non-delivery or short delivery of Goods, even if caused by the Company's negligence.

4 Price :

4.1 Any price referred to in the Contract is based upon costs current at the date the order is accepted by the Company, but the actual price may at the Company's discretion be subject to increases from time to time to reflect increases in the Company's material and/or production costs. The Company reserves the right to change prices without notice. Unless otherwise expressly stated in writing, all prices are payable in Pound Sterling and are exclusive of VAT.

4.2 Time for payment shall be of the essence and no payment shall be deemed to have been received until the Company has received cleared funds.

4.3 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

4.4 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 Company to the Buyer.

4.5 Payment shall be made in full within the time agreed for payment between the Company and the Buyer ('the Due Date'). In the absence of written agreement to the contrary, the Due Date will be the date of delivery. Interest at the annual rate of 8% above the base lending rate from time to time of The National Westminster Bank will be charged on a daily basis (both before and after judgement) on all monies outstanding after the Due Date until the date of actual payment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interests) Act 1998.

4.6 Any discount having been previously agreed may be removed if the payment period falls outside of that agreed.

4.7 The Buyer will be responsible for any and all collection costs which may be incurred by the Company in the legitimate process of collection of monies due.

5 Risk and Title :

5.1 Risk to the Goods shall pass to the Buyer at the time of delivery.

5.2 Notwithstanding the passing of risk under 5.1 above, ownership of and title of the Goods shall remain in the Company unless and until payment in full has been made to the Company for the Goods and for all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall

5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

5.3.2 store the Goods and any such new product or products and any Goods in a processed condition separately from all other goods and products and properly protect, and keep them identifiable as the Company's property;

5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

5.3.4 maintain the Goods in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall promptly produce the policy of insurance to the Company.

5.4 The Buyer shall grant the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right of possession has terminated, to recover them.

5.5 Where payment is made by means of any bill of exchange, cheque or other negotiable instrument, the Company shall be deemed not to have received payment for the purposes of this condition unless and until the bill of exchange, cheque or other negotiable instrument shall have been honoured on presentation for payment.

5.6 The Company reserves the right to check details supplied by the Buyer with a credit reference agency including information from the electoral register and fraud prevention agencies. A record of this search will be kept and the search details and other information which is supplied to the Company may be used by the Company. This information may also be used for debt tracing and the prevention of money laundering as well as the management of the Buyers account. The Company may also pass information to financial and other organisations involved in fraud prevention to protect the Company and its associates from theft and fraud. For the avoidance of doubt, the Company shall at all times comply with the provisions of the Data Protection Act 1998.

6 Termination and Suspension:

6.1 Without prejudice to any rights and remedies available to it, the Company shall be entitled, forthwith on written notice to the Buyer either to terminate wholly or in part the Contract and/or any other contract with the Buyer or to withhold performance of all or any of its obligations under the contract (and on the giving of such notice all monies outstanding from the Buyer to the Company shall become immediately due and payable) if :

6.1.1 any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the Due Date (in which event the Company shall have a general lien for any such sum on all and any property of the Buyer in its possession);

6.1.2 the Buyer refuses to take delivery of or collect any of the Goods;

6.1.3 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;

6.1.4 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or

obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;

6.1.5 the Buyer encumbers or in any way charges any of the Goods;

6.1.6 the Buyer commits any breach of contract with the Company; or

6.1.7 if, in its absolute discretion the Company considers the Buyer's credit status to be unsatisfactory.

7 Warranty :

7.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery and for the period of one month thereafter, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act. Additionally, the Company warrants that (subject to the other provisions of these conditions) chilled produce shall have a shelf life of a maximum of 5 days.

7.2 The Company shall not be liable for a breach of the warranty in condition 9.1 unless:

7.2.1 the Buyer gives written notice of the defect to the Company within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

7.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

7.3 The Company shall not be liable for a breach of the warranty in condition 7.1 if:

7.3.1 the Buyer makes any further use of such Goods after giving such notice; or

7.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

7.3.3 the Buyer alters or repairs such Goods without the written consent of the Company.

7.4 Subject to conditions 7.2 and 7.3, the Company shall make good at its option by repairing or replacing such Goods (or the defective part) or refunding the price of such Goods at the pro rata contract rate.

7.5 If the Company complies with condition 7.4 it shall have no further liability for a breach of the warranty in condition 7.1 in respect of such Goods.

7.6 Where any such defect is due to a fault in any part or ingredient used in the Goods and not manufactured by the Company, the Buyer shall be entitled, as against the Company, only to such remedy as the Company may be able to obtain against the relevant manufacturer and supplier.

8. Limitation of Liability:

8.1 Subject to conditions 3 and 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

8.1.1 any breach of these conditions;

8.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

8.1.3 any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract.

8.2 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.

8.3 Nothing in these conditions excludes or limits the liability of the Company:

8.3.1 for death or personal injury caused by the Company's negligence;

8.3.2 under section 2 (3) of the Consumer Protection Act 1987;

8.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

8.3.4 for fraud or fraudulent misrepresentation.

8.4 Subject to conditions 8.2 and 8.3:

8.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

8.4.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

8.5 Where the goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.

8 General :

8.1 The Company shall have no liability whatsoever for any failure to perform or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers provided that, if the event in question continues for a continuous period in excess of 14 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

8.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not. No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Buyer of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

8.3 The Contract is personal to the Buyer, who shall not assign or in any way part with the benefit thereof without the Company's prior written consent.

8.4 Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.

8.5 The Contract shall in all respects be governed by and construed in accordance with English law, and the Company and the [Buyer] [parties] shall submit to the exclusive jurisdiction of the English courts

8.6 The Supplier shall not disclose its business connection or its terms of business with the Company to any third party without the Company's permission save as required by law.

8.7 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 shall not be affected.

8.8 The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.