



RWM FOOD GROUP LTD

TERMS AND CONDITIONS

1 Interpretation in these Conditions:

- 1.1 The definitions and rules of interpretation in this clause 1.1 apply in these Conditions:
- 1.1.1 “**Company**” means RWM Food Group Limited, a company registered in England and Wales with company registration number 03112351 and whose registered office is c/o New Media Law LLP, 3-4A Little Portland Street, London W1W 7JB, and any of its subsidiaries (as defined in section 736 of the Companies Act 1985);
- 1.1.2 “**Conditions**” means the standard terms and conditions of sale set out below and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company;
- 1.1.3 “**Contract**” means any contract between the Company or the Customer for the sale or purchase of the Products incorporating these Conditions;
- 1.1.4 “**Customer**” means the person firm or the Company who purchases the Products from the Company;
- 1.1.5 “**Delivery Point**” means the place where delivery of the Products is to take place under Condition 4;
- 1.1.6 “**Products**” means the Products (including any part or parts of them) which the Company is to supply in accordance with these Conditions;
- 1.1.7 “**Writing**” includes facsimile transmissions.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

2 Application of Terms

- 2.1 Subject to variations agreed under clause 2.3 below the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order specification or other document).



- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Products by the Customer shall be deemed to be an offer by the Customer to purchase Products subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Products to the Customer. Each order which is accepted in writing shall constitute an individual legally binding Contract between the Customer and the Company.
- 2.6 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 28 days only from its date, provided that the Company has not previously withdrawn it.

3 Specification and Description of the Products

- 3.1 The quantity and description of the Products shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All descriptive matter, specifications, price lists and advertising issued by the Company and any descriptions or illustrations in the Company's catalogues are issued or published only to give an indication of the Products described in them. They do not form part of these Conditions and this is not a sale by sample.
- 3.3 Dimensional and other physical properties of the Products are subject to the tolerances specified in the Company's current relevant product literature copies of which are available on request and are subject to clause 3.2 above.
- 3.4 Due to a policy of continuous improvement the Company reserves the right to modify specifications without notification on its own branded products.
- 3.5 If the Products are to be manufactured or any process is to be applied to the Products by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed by the Company in connection with or paid or agreed to be paid by the



Company in settlement of any claim for infringement of any patent, copyright design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

4 Price

- 4.1 Unless otherwise agreed by the Company in writing, the price for the Products shall be those stated on the Company's price list at the date of delivery or deemed delivery.
- 4.2 Unless as otherwise stated under the terms of any quotation or in any price list of the Company all prices quoted are exclusive of VAT and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Customer will pay in addition when it is due to pay for the Products.
- 4.3 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5 Payment and Interest

- 5.1 Subject to clause 5.6, payment of the price for the Products is due and must be received on or before 14 days of the date of the Company's invoice and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Customer.
- 5.2 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.
- 5.3 A settlement discount where agreed in writing will be allowed only for payment within the period specified in 5.1 above.
- 5.4 If the Customer fails to pay the Company any sum due under to the Contract the Customer will be liable to pay interest to the Company on the sum from the due date until paid at the annual rate of 3% above the base lending rate from time to time of RBS Bank plc accruing on a daily basis. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 If the Customer fails to make payment by the due date all costs and expenses incurred by the Company in recovery of the outstanding sum shall be recoverable from the Customer on a full indemnity basis including, without prejudice to the generality of the foregoing, all legal and administrative costs irrespective of whether or not legal proceedings are issued against the Customer.
- 5.6 All payments payable to the Company under these Conditions shall become due immediately upon termination of any Contract despite any other provisions.



- 5.7 The Customer shall make all payments due under these Conditions without deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

6 Delivery

- 6.1 Unless otherwise agreed in writing by the Company the place of delivery for the Products shall be the address for the Customer shown on the invoice.
- 6.2 Any dates specified by the Company for delivery of the Products are intended to be an estimate only and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time.
- 6.3 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms 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 Products (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract.
- 6.4 If a delivery is to be made by instalments, each part delivery of the Products shall be deemed to be the subject of a separate Contract.
- 6.5 If for any reason the Customer will not accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licences or authorisations at that time:
- 6.5.1 risk in the Products will pass to the Customer;
 - 6.5.2 the Products will be deemed to have been delivered; and
 - 6.5.3 the Company may store the Products until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance) during that period.
- 6.6 The Customer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Products.
- 6.7 The quantity of any consignment of Products as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 6.8 The Company shall not be liable for any non-delivery of Products unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Products would in the ordinary course of events have been received.



6.9 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

7 Risk/Title

7.1 The Products are at the risk of the Customer from the time of delivery.

7.2 Ownership of the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Products; and

7.2.2 all other sums which are or which become due to the Company from the Customer on any account.

7.3 Until ownership of the Products has passed to the Customer:

7.3.1 the Customer holds the Products solely as bailee for the Company;

7.3.2 the Customer must store the Products not yet used (at no cost to the Company) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

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

7.3.4 maintain the Products in 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 Customer shall produce the policy of insurance to the Company.

7.4 The Customer may resell the Products before ownership passes to it solely on the following conditions:

7.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value and the Customer shall hold such part of the proceeds of sale as representing the amount owed by the Customer to the Company on behalf of the Company and the Customer shall account to the Company accordingly.

7.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

7.5 The Customer's right to possession of the Products shall terminate immediately if:

7.5.1 The Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory protection 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;

7.5.2 The Customer fails to observe/perform any of its obligations under the Contract or any other Contract with the Company, or is unable to pay its debts within the meaning of s.123 Insolvency Act 1986 or the Customer ceases to trade; or the Customer encumbers or in any way charges any of the Products; or

7.5.3 The Customer encumbers or in any way charges any of the Products.

7.6 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

7.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored, in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

7.8 Where the Company is unable to determine whether any Products are the products in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all products of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

7.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 7 shall remain in effect.

8 Quality and Returns

8.1 Where the Company is not the manufacturer of the Products the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company by the manufacturer of the Products.

8.2 The Company warrants that (subject to these Conditions) upon delivery the Products will be of satisfactory quality within the meaning of the Sale and Supply of Goods Act 1994 and be reasonably fit for any particular purpose for which the Products are being brought if the Customer had made known that purpose to the Company in writing and the Company had confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.

8.3 The Company shall not be liable for a breach of any warranties in clause 8.2 unless:



- 8.3.1 the Customer gives written notice of the defect to the Company within 72 hours of delivery; and
 - 8.3.2 the Company is given a reasonable opportunity after receiving the notice from the Customer under clause 8.3.1 to examine such Products and, if asked to do so by the Company, the Customer returns such Products to the Company at the Customer's cost.
- 8.4 The Company shall not be liable for a breach of any warranties in clause 8.2 if:
- 8.4.1 the Customer makes further use of such Products after giving such notice; or
 - 8.4.2 the Customer alters or repairs such Products without the written consent of the Company; or
 - 8.4.3 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Products or (if there are none) good trade practice.
- 8.5 Subject to clause 8.3 and clause 8.4 if the Products do not conform with any of the warranties in clause 8.2 the Company shall at its option replace such Products free of charge or refund the price of such Products provided that if the Company so requests the Customer shall, at the Company's expense, return the Products or part of the Products which is defective to the Company.
- 8.6 If the Company complies with clause 8.5 it shall have no further liability for a breach of any warranties in clause 8.2 in respect of such Products.

9 Limitation of Liability

- 9.1 Subject to clause 6 and clause 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 Customer in respect of:
- 9.1.1 any breach of these conditions;
 - 9.1.2 any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and
 - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 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.
- 9.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 9.4 Subject to clause 9.2 and clause 9.3:



- 9.4.1 the Company's total liability in contract, tort, misrepresentation or otherwise arising in connection with the performance of this Contract shall be limited to the price of Products under the Contract; and
- 9.4.2 the Company shall not be liable to the Customer for loss of use, profits or contracts or for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10 Displays and Display Units

Items for display/display units are supplied by the Company on the strict understanding that they will be used only to display the Company's products. The Company will immediately retrieve (at the Company's cost) any displays used for other companies products or displays.

11 Pallets / Trays

- 11.1 Where Product deliveries are made on Chep, LPR or IPP pallets, the ownership of these pallets remains with Chep UK Ltd, LPR and IPP. at all times. These pallets are hired by the Company and upon delivery to the delivery point of the Customer the hire and the responsibility of the pallet will be transferred to the Customer. Chep pallets are exchanged whereas LPR and IPP are delivered on a one way basis. LPR and IPP pallets must be made available by the Customer for repatriation. For the avoidance of doubt, LPR pallets are bright red and IPP pallets are dark brown in colour.
- 11.2 In the event of the use by the Company of plastic plastics, white wood, dolav, plastibox, dolly or cages (the "**Storage Items**") being used for Product deliveries which are left in the possession of the Customer, such Storage Items will remain the property of the Company and should be made available for collection by the Company. In the event of a Customer failing to return, make available for collection, damaging or losing these Storage Items then the company reserves the right to charge the Customer for Storage Items at the actual cost at the time of replacement.

12 Sale of Foods and Drugs Act

The Company warrants to the Customer that all Products supplied under these Conditions conform with all relevant sale of foods and drugs legislation and with all regulations relating to foodstuffs currently in force.

13 Insolvency of Customer

In the event of any of the circumstances identified in clause 7.5.1 applying to the Customer then, without prejudice to any other right or remedy available to the Company under these Conditions, the Company shall be entitled (but not obliged) to terminate the Contract immediately or suspend any further deliveries under the Contract without any liability to the Customer.

14 Assignment



- 14.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company
- 14.2 The Company may assign the Contract or any part of it to any person, firm or the Company

15 Force Majeure

The Company shall not be liable to the Customer or be deemed in breach of the Contract due to any delay in performing, or any failure to perform the Contract if it is prevented from or delayed in carrying on its business due to any cause beyond the Company's reasonable control including, without limitation, acts of God, explosion, flood, storm, fire or accident, war or threat of war or national emergency, civil commotion, riot, governmental action, epidemic, strikes, lock-outs or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16 General

- 16.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 16.2 If any provision of these Conditions or the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness to be deemed severable and the remaining provisions of the Conditions and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of these Conditions will not be construed as a waiver of any of its rights under these Conditions.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of these Conditions by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of these Conditions.
- 16.5 The parties to the Contract do not intend that any term of the 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.
- 16.6 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.

17 Communications

- 17.1 All communications between the parties about these Conditions must be in writing and delivered by hand or sent by pre-paid first class post, sent by facsimile transmission or sent by electronic mail:



- 17.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company (or where applicable, such electronic mail address as has been provided to the Customer for the purposes of communication under the Contract; or
 - 17.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of these Conditions or such other address as shall be notified to the Company by the Customer (or where applicable, such electronic mail address as has been provided to the Company for the purposes of communication under the Contract).
- 17.2 Communications shall be deemed to have been received:
- 17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - 17.2.2 if sent by facsimile transmission on a working day prior to 4.00 pm at the time of transmission and otherwise on the next working day; or
 - 17.2.3 if sent by electronic mail, one hour after being sent, or if this falls after 5pm in the United Kingdom or otherwise than on a working day, at 9am the next working day - providing that an undeliverable receipt has not been returned to the sender in this time.