

## **Flavours of Spain Limited - Terms & Conditions**

### **1. BASIS OF THE SALE**

- 1.1. Flavours of Spain Limited (hereinafter referred to as "FOS") shall sell and the person or company (as appropriate) placing the order ("Buyer") shall purchase Goods in accordance with any written quotation of FOS which is accepted by the Buyer, or any written order of the Buyer which is accepted by FOS, subject in either case to these Conditions, which, together with any special terms agreed in writing between FOS and the Buyer, shall govern the Contract between FOS and the Buyer to the exclusion of any other terms and conditions, including the Buyer's own standard terms and conditions.
- 1.2. No variation of these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and FOS.
- 1.3. FOS's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by FOS in writing and any advice or recommendation given by FOS or its employees or agents to the Buyer as to the storage, application or use of the Goods which is not confirmed in writing by FOS shall be followed by the Buyer entirely at its own risk.
- 1.4. 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 FOS shall be subject to correction without any liability on the part of FOS.

### **2. ORDERS AND SPECIFICATIONS**

- 2.1. The Buyer shall be responsible to FOS for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving FOS any necessary information relating to the Goods within a sufficient time to enable FOS to perform the Contract in accordance with its terms. The quantity, quality and description of and any specification for the Goods shall be those set out in FOS's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by FOS).
- 2.2. FOS reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable health and safety or other statutory requirements or, where the Goods are to be supplied to FOS's specification, which do not materially affect their quality or performance.
- 2.3. No order which has been accepted by FOS may be cancelled by the Buyer except with the agreement in writing of FOS and on terms that the Buyer shall indemnify FOS in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by FOS as a result of cancellation.

### **3. PRICE**

- 3.1. The price of the Goods shall be FOS's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in FOS's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only.
- 3.2. Except as agreed otherwise in writing between the Buyer and FOS, all prices are given by FOS on an ex-warehouse basis.
- 3.3. The prices quoted are exclusive of delivery, insurance, and any special packaging, which the Buyer shall be additionally liable to pay to FOS. Value Added Tax is inclusive in the retail prices where applicable but exclusive on wholesale prices, which the Buyer shall be additionally liable to pay to FOS.

### **4. TERMS OF PAYMENT**

- 4.1. For wholesale purposes: The Buyer shall pay the price of the Goods in full for the first order/payment without set-off or deductions prior to delivery, notwithstanding that delivery may not have taken place and the property of the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. For subsequent orders/payments 50% of the price of the Goods needs to be paid before the delivery and the other 50% within 30 days from the invoice date
- 4.2. For retail purposes: The Buyer shall pay the price of the Goods in full previously to the delivery.
- 4.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to FOS, FOS shall be entitled to:
  - 4.3.1. cancel the Contract or suspend any further deliveries to the Buyer;
  - 4.3.2. demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer
  - 4.3.3. appropriate any payment made by the Buyer to such of the Goods (or the goods

- supplied under any other contract between the Buyer and FOS) as FOS may think fit (notwithstanding any purported appropriation by the Buyer); and
- 4.3.4. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four (4) per cent per annum above Bank of England base rate from time to time, until payment in full is made.

## **5. INSOLVENCY OF BUYER**

- 5.1. This clause applies if:
- 5.1.1. 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 than for the purpose of amalgamation or reconstruction); or
  - 5.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 5.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
  - 5.1.4. FOS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 5.2. If clause 5.1 applies then, without prejudice to any other right or remedy available to FOS, FOS shall be entitled to 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 and if any of the Goods have not been delivered FOS may 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.

## **6. RISK**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when FOS has tendered delivery of the Goods and the Buyer shall insure the Goods from the date of delivery until title has passed to it.

## **7. TITLE RETENTION**

- 7.1. Until the purchase price of the Goods comprised in this or any other contract between FOS and the Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to FOS shall have been paid or satisfied in full (and if by cheque, then only upon clearance), title to the Goods remains vested in FOS (notwithstanding the delivery of the same and the passing of the risk therein).

## **8. DELIVERY**

- 8.1 Any dates quoted for delivery of the Goods are approximate only and save as provided in clause 8.3 FOS shall not be liable for any delay in delivery of the Goods howsoever caused.
- 8.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by FOS 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.
- 8.3. If FOS fails to deliver the Goods for any reason other than any cause beyond FOS's reasonable control or the Buyer's fault, and FOS is accordingly liable to the Buyer, FOS's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

## **9. GUARANTEE**

- 9.1 FOS hereby guarantees to the Buyer that FOS shall at its sole option either replace free of charge or provide a refund or credit note to the value of sums already paid in respect of defective Goods where the buyer notifies FOS of such defects within 14 days of delivery of the Goods so affected.
- 9.2 FOS gives no warranties regarding the fitness for purpose, performance, use, nature or quality of the Goods, whether express or implied, by statute, at common law or otherwise howsoever.
- 9.3 Subject to Condition 9.5 and notwithstanding anything else contained in these Conditions or the Contract, in no circumstances shall FOS be liable, in contract, tort (including negligence

or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, contracts, revenue, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.

- 9.4 Subject to Condition 9.5 FOS's liability to the Buyer in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the Goods specified in the Contract.
- 9.5 Nothing in these Conditions shall operate or be construed to operate so as to exclude or restrict the liability of FOS for death or personal injury caused by reason of the negligence of FOS or of its servants, employees or agents.
- 9.6 FOS shall not be under any liability for any failure to perform any of its obligations under the Contract due to any event outside the reasonable control of FOS.

## **10. CONFIDENTIALITY**

- 10.1 FOS and the Buyer undertake not to use or disclose any information concerning the business and affairs of the other that it obtains or receives during or after the performance of the contract and shall procure that all their relevant employees agents and sub-contractors are made aware of and comply with this undertaking.
- 10.2 The provisions of clause 10.1 above shall not apply to the whole or any part of any information to the extent that it is trivial or obvious or which at the time of disclosure was in the public domain or already in the other's possession other than as a result of a breach of this clause.
- 10.3 Notwithstanding the provisions of this clause 10, FOS shall be entitled to refer, in the course of promoting or advertising FOS, its supply of Goods to the Buyer after prior consultation with the Buyer.

## **11. DATA**

- 11.1 All personal data relating to the Buyer collected by FOS from which FOS can identify the Buyer may be recorded electronically and used in accordance with the Data Protection Act 1998. For purposes of identification, billing and marketing, FOS will collect that data and will also hold onto it for its own use in the business of FOS, processing orders, administration and future changes to the site to improve and develop its services, as well as for marketing, advertising and promotional purposes. FOS may also use the information or parts of it to occasionally broadcast it or notify the Buyer about FOS events, promotions or related activities that the Buyer may find useful.

## **12. INTELLECTUAL PROPERTY**

- 12.1. All copyright, design right, trade mark rights, patent rights and rights in know how and other like rights whether registered or unregistered which subsist now or in the future ("Intellectual Property Rights") in the Goods, documents, drawings, specifications, designs, programmes or any other material prepared or created by FOS or its employees, agents or sub-contractors shall vest in and shall remain the property of FOS.
- 12.2. The Buyer shall not be entitled and agrees not to manufacture, reproduce, copy, modify or adapt the Goods and any part thereof for any purpose other than that for which they were furnished, or do any other act inconsistent with FOS's ownership of Intellectual Property Rights in clause 12.1 above.

## **13. GENERAL**

- 13.1. FOS reserves the right to sub-contract the fulfilment of the Contract (including any installation) or any part thereof.
- 13.2. Any notice required or permitted to be given by either party to the other under these Conditions 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.
- 13.3. No waiver by FOS of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4. 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 provisions in question shall not be affected thereby.
- 13.5. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 13.6. Clause headings are included for convenience only and shall not affect the interpretation of these Conditions.
- 13.7. The Contract shall be governed by English law and the parties shall submit to the non-exclusive jurisdiction of the English courts.