

# **Penta Foods Limited - Standard Terms & Conditions**

## **1. DEFINITIONS AND INTERPRETATIONS:**

1.1 In these Conditions these words and expressions shall (except where the context otherwise requires) have the following meanings:

'Buyer' the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the goods is accepted by the Seller

'Conditions' 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

'Contract' the contract for the purchase and sale of the Goods

'Goods' the goods (including any installments of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions

'Seller' Penta Foods Ltd.

(registered in England under number 2628701)

1.2 References in these Conditions to clauses, sub-clauses and schedules are to clauses, sub-clauses and schedules of these Conditions.

1.3 Where reference is made in these Conditions to a statutory provision this includes all prior and subsequent enactments, amendments and modifications in relation to that provision and any regulations made under it.

1.4 In these Conditions words in the singular shall include the plural and vice versa, and words importing the masculine, feminine and neuter gender shall include the others.

1.5 References to a 'person' shall include any individual, partnership, unincorporated association or body corporate.

1.6 Clause headings are for convenience only and do not affect the interpretation or construction of these Conditions.

## **2. TERMS OF SALE**

2.1 The parties contract on the terms contained in these Conditions which shall prevail over any inconsistent terms which the Buyer may seek to introduce. Such inconsistent terms shall have no effect.

2.2 These Conditions form the whole agreement between the Seller and the Buyer and shall not be removed, or varied in any way. No other express terms, written or oral, shall be incorporated into the Contract unless expressly agreed by authorized persons from both parties, in writing.

2.3 The Seller's sales representatives are not authorized to do any of the following things on behalf of the Seller:

2.3.1 remove or vary any of these terms or introduce any other terms, written or oral, into the Contract;

2.3.2 make any representation, agree any condition precedent or enter into any collateral contract;

2.3.3 accept any offer or counter-offer made by the Buyer.

## **3. ORDERS AND SPECIFICATIONS**

3.1 The description of the Goods shall be as set out in the Seller's quotation.

3.2 The Seller may from time to time make alterations in the specification of Goods which are required to comply with any applicable statutory requirements of which do not materially affect the fitness for purpose or quality of the Goods.

## **4. CANCELLATION**

4.1 The Buyer is not permitted to cancel this contract except with the written consent of the Seller.

4.2 Where there is an agreed cancellation permitted by paragraph 4.1 above the Buyer shall pay to the Seller the sum of (10 per cent) of the contract price, representing liquidated damages to compensate the

Seller for all losses incurred as a result of the cancellation.

## **5. PRICE OF THE GOODS**

5.1 This is the Seller's quoted contract price of the Goods.

5.2 If no price has been quoted, it is the price given for the Goods in the Seller's standard price list effective at the date the order is accepted.

5.3 Unless otherwise stated, prices in any quotation or given in the Seller's price list effective at the date the order is accepted.

5.4 If the Seller incurs any costs (including storage charges) as a result of the Buyer's neglect or default, the Buyer must pay those costs in addition to the quoted contract price.

5.5 Where at any time before delivery of the Goods:

5.5.1 there is an increase in the cost of:

(a) raw materials; or

(b) labour or services; or

5.5.2 there are any currency fluctuations increasing the cost of raw materials, the Seller may adjust the price accordingly.

5.6 Unless otherwise stated, all prices quoted or given in the Seller's price list are exclusive of VAT

## **6. PAYMENT**

6.1 The Seller is entitled to send an invoice to the Buyer for the price of the Goods on or at any time after the delivery of the Goods.

6.2 The Buyer must pay the invoice value as per the terms determined by the Seller, from the Buyer's credit rating and account application, starting from the date of the Seller's invoice.

6.3 The Seller reserves the right to charge interest at (10 per cent per annum) on all overdue accounts. Interest is deemed to accrue on a day-to-day basis from and including the date for payment under clause 6.2.

6.4 If the Buyer fails to pay any installment of the price on the date it becomes payable, the whole of the balance of the price then outstanding becomes payable immediately.

6.5 If the Buyer fails to pay the price on the date specified, the Seller may terminate the Contract and recover the Goods in accordance with clause 8.

## **7. DELIVERY**

7.1 All items which the Seller is to deliver will be delivered to the Buyer's address, if known. In the absence of such address, delivery is deemed to take place at the Seller's premises.

7.2 The Seller reserves the right to make delivery by installments and to tender a separate invoice in respect of each installment. Each delivery shall constitute a separate contract.

7.3 If the Seller delivers one or more installments late or delivers one or more installments which do not correspond with the terms of the contract, the Buyer may not treat this as a reason for terminating the contract as a whole. The Buyer's remedy is limited to a claim for damages.

7.4 Delivery dates mentioned in any quotation, order or other document are approximate only and not of any contractual effect. The Seller shall not be liable for any delay in delivery howsoever caused.

7.5 Late delivery of the Goods does not entitle the Buyer to do any of the following:

7.5.1 reject the Goods

7.5.2 terminate the contract

7.5.3 withhold payment of any part of the contract price.

7.6 The Seller reserves the right to deliver up to (10 per cent) less than the quantity ordered.

## **8. PROPERTY AND RISK**

8.1 Ownership of the Goods remains with the Seller and will not pass to the Buyer until one of the following

events occurs:

8.1.1 The Seller has paid for all of the Goods and no other amounts are owed by the Buyer to the Seller in respect of other goods supplied by the Seller.

8.1.2 The Buyer sells the Goods in accordance with these Conditions in which case ownership of the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.

8.2 Where the Goods are attached to or incorporated in other goods or are altered by the Buyer, ownership of the Goods shall not pass to the Buyer by virtue of the attachment, incorporation or alteration if the Goods remain identifiable and, where attached to or incorporated in other goods, can be detached or removed from them.

8.3 The Buyer must store the Goods separately from any other goods until one of the following events occurs;

8.3.1 they become the Buyer's property; or

8.3.2 they are attached to or incorporated in other goods; or

8.3.3 they are delivered to a purchaser from the Buyer.

8.4 If the Buyer is overdue in paying for the Goods or any other goods supplied by the Seller, the Seller may, if still the owner of the Goods, recover and resell them. The Seller may enter the Buyer's premises for this purpose and may, if necessary, detach or remove the Goods from any other goods. This does not affect any other right of the Seller.

8.5 Until the Buyer has paid the Seller for the Goods and all other goods which the Seller has supplied to the Buyer:

8.5.1 The Buyer must not assign to any other person any rights arising from a sale of the Goods without the Seller's written consent.

8.6 Risk in the Goods passes to the Buyer on delivery in accordance with clause 7.

8.7 The Buyer must have valid insurance at the date of purchase to cover the Goods against all insurable risks for the price due to the Seller for the Goods.

8.8 If the Goods are destroyed by an insured risk before the Buyer has paid for them, the Buyer shall hold the insurance proceeds as the Seller's trustee.

## **9. WARRANTIES AND LIABILITY**

9.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects.

9.2 The Buyer shall carefully examine the Goods immediately on delivery of them and shall notify the Seller in writing of any defects reasonably discoverable on careful examination. The Seller must receive this notification within 7 days commencing with the day of delivery to the Buyer. In the absence of notification the Seller excludes all liability in respect of any defect.

Because the potential losses which the Buyer may suffer as a result of any breach of contract by the Seller are more readily ascertainable by the Buyer, and because any such losses could be disproportionate to the contract price, and so that the Seller can keep the contract price as low as possible, the parties agree that the Seller limits its liability as follows:

9.3 Where any valid claim in respect of any of the Goods which is based on any 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 shall be entitled to 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 the proportionate part of the price),

but the Seller shall have no further liability to the Buyer.

9.4 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of consequential or indirect loss would be:

- \* loss of profits;

- \* loss of contracts;

- \* damage to property of the Buyer or anyone else; and

- \* personal injury to the Buyer or anyone else (but only so far as such injury is not caused by the Seller's negligence).

9.5 The Seller shall not be liable for any failure to deliver the Goods arising from circumstances outside the Seller's control.

9.5.1 Non-exhaustive illustrations of circumstances outside the Seller's control include act of God, war, riots, explosion, abnormal weather conditions, fire, flood, Government action, strikes, lockouts, delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

9.5.2 If the Seller is prevented from delivering in the above circumstances, it shall notify the Buyer of the fact.

9.5.3 If the circumstances preventing delivery continue, redelivery will be arranged by the Seller at a time such that the circumstances preventing delivery change.

9.5.4 If the contract is cancelled in this way, the Seller shall refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount which the Seller is entitled to claim from the Buyer) but the Seller accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver.

## **10. INSOLVENCY**

If the Buyer:

10.1 being a company,

10.1.1 has a petition presented for its winding up, or

10.1.2 passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction), or

10.1.3 enters into a voluntary arrangement with its creditors, or

10.1.4 becomes subject to an administration order, or

10.1.5 has a receiver appointed of all or any of its assets, or

10.2 being an individual or firm,

10.2.1 becomes bankrupt or insolvent, or

10.2.1 enters into a voluntary arrangement with creditors,

then the Seller shall be entitled to treat the Contract as being at an end or suspend any further deliveries under the Contract. If the Goods have been delivered but not paid for, the price shall become due immediately regardless of any previous agreement to the contrary.

## **GENERAL**

11.1 The Seller is not a member of any group of companies and accordingly the Seller does not act on behalf of any group of companies

11.2 Any notice which must be given under these Conditions may be either delivered personally or posted.

11.2.1 Notice given by post must be pre-paid and correctly addressed:

(a) in the case of a registered company, to its registered office; and

(b) in any other case, to the recipient's address as set out in these Conditions (unless the recipient has notified another address to the other parties to these Conditions in accordance with this clause, in which case, to the notified address).

11.2.2 A posted notice which complies with the sub-clause 11.2.1 above is deemed served:

(a) when posted on a business day, on the second business day after the day of posting; and

(b) in any other case, on the third business day after the day of posting.

11.3 The Court may strike out or override any part of these Conditions which it considers unreasonable, invalid or unlawful (whether an entire clause or only part of one) and enforce these Conditions as if the offending part had never been contained in it.

11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement.

11.5 Neither party may assign, charge or sub-contract the Contract, or any part of it, without the other's prior written consent.

11.6 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

Signed \_\_\_\_\_

Dated \_\_\_\_\_

By signing and returning this document you agree to be bound by the above Standard Terms & Conditions.

**Issued 28/04/10  
Version 2**