

Terms and conditions of sale.

The customer's attention is drawn in particular to clause 8.

1. Interpretation

1.1 Definitions:

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with 13.3.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Losses: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Michael I Holdsworth Ltd t/a Holdsworth Foods (registered in England and Wales with company number 02027459)

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.

- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 Before a Customer can place any orders with the Supplier the Customer will have a current and open trading account with the Supplier.
- 2.3 By placing an Order with the Supplier either via the Supplier's telesales department, website or otherwise, the Customer agrees that the Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer must ensure that the terms of the Order submitted by the Customer are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, or commences Delivery of the Goods to the Customer, whichever occurs earlier, at which point and on which date the Contract shall come into existence.
- 2.5 The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.6 Any samples, descriptive matter or advertising produced by or on behalf of the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures (whether digital or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.8 A minimum value of £200 (net) is required for each delivery which may be made up of any mix of products. Orders below £200 (net) may not be accepted or if accepted

may be subject to a surcharge and or a delivery charge. No discount or special prices will be applicable to Orders below the minimum value of £200 (net).

2.9 The Supplier may be able to split original product cases and, in some cases, a minimum split quantity may apply and the Supplier may add an additional charge to the Order for split cases.

2.10 All Goods are offered subject to availability on assembly of the Order.

3. Goods

3.1 Goods are described in the Supplier's digital and printed catalogue as modified from time to time.

4. Delivery

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments and the outstanding balance of Goods remaining to be delivered.

4.2 Unless the Supplier advises otherwise an Order must be received by the Supplier before 4.00pm on the day of Order for delivery on the customers next scheduled delivery day.

4.3 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) or at a reasonably accessible location at the Customer's premises at any time after the Supplier notifies the Customer that the Goods are ready.

4.4 The Customer shall allow the Supplier access to such premises and shall use best endeavours to ensure that a responsible person shall be at the place of delivery to take delivery of the Products and to sign for them. If such a person is not present at the time of delivery the Customer hereby consents to the Supplier leaving the Products at what appear to be the premises nominated by the Customer as the place of delivery, and when the Products are so left, risk in the Products shall pass to the Customer and no liability shall remain with the Supplier in respect of the Products.

4.5 If the Customer fails to take delivery or fails to give the Supplier adequate delivery instructions at the time stated for delivery, the Customer shall not be entitled to refuse to accept redelivery after the estimated date for delivery by reason of the consequent failure of those Products to meet any shelf-life requirement or otherwise.

- 4.6 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.7 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 If the Supplier fails to deliver the Goods, its shall not be liable for the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods unless agreed in advance, and prior to such cost and expenses being incurred, with a representative of the Supplier.
- 4.9 If the Customer fails to accept delivery of the Goods within one Business Day of the Supplier notifying the Customer that the Goods are ready for delivery, then, except where such failure is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods the Order shall be cancelled by the Supplier with no liability to the Customer.
- 4.10 The Supplier may deliver the Goods by instalments, which it shall invoice and which the Customer shall pay for separately. Each instalment shall constitute a separate contract. Any delay in delivery of or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 All Goods should be checked at the time of delivery. The Supplier is not liable for any losses unless notified to the Supplier at the time of Delivery. Any rejected Goods must be in the original undamaged packaging and have the proof of delivery for a full credit
- 4.12 The Customer shall ensure that the Supplier's delivery personnel have safe and unobstructed access to and egress from the delivery site at all times. This obligation includes, but is not limited to, maintaining clear delivery access routes, adequate lighting, and appropriate signage to guide delivery personnel safely to and from the designated delivery area.
- 4.13 The Customer is responsible for implementing and maintaining the following specific safety measures:
- (a) Clear routes: All routes leading to the delivery area must be free from debris, obstacles, and any other hazards that may impede safe access or egress;

- (b) Adequate Lighting: The Customer shall ensure that all access routes and delivery areas are sufficiently illuminated to allow for safe navigation by delivery personnel, particularly during low light hours/conditions;
 - (c) Signage: Appropriate signage must be installed to direct delivery personnel to the designated delivery area. Such signage should be visible, legible, and placed at strategic locations to prevent confusion or misdirection; and
 - (d) Weather Conditions: In the event of adverse weather conditions, the Customer shall take reasonable steps to mitigate any risks associated with such conditions, including but not limited to, clearing snow, ice, or water from access routes and delivery areas.
- 4.14 The Customer shall comply with all applicable laws, regulations, and industry standards related to safety and access for delivery personnel. This includes obtaining any necessary permits or approvals required for maintaining safe access and egress.
- 4.15 The Customer shall promptly notify the Supplier of any known hazards or conditions that may affect the safety of delivery personnel. The Customer shall take immediate corrective action to address such hazards to ensure continued safe access and egress.
- 4.16 The Customer agrees to indemnify, defend, and hold harmless the Supplier and its delivery personnel from any claims, damages, or liabilities arising from the Customer's failure to comply with the obligations set forth in this clause.

5. Quality

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) comply with the Food Safety Act 1990;
 - (b) to be of the nature, substance and quality described; and
 - (c) to comply with all statutory requirements from time to time in force relating to the sale of food (so far as applicable to such goods).
- 5.2 Most food product with a life from manufacture of 12 months or less must by law be dated either by 'Best Before' or a 'Use By' statement. The Supplier endeavours to ensure that all dated stock has an optimum remaining life when it is sold to the Customer. It is the Customer's responsibility to check the durability dates at time of delivery as the Supplier is unable to accept returned products relating to date coding after the time of delivery.

- 5.3 The Customer shall ensure that no Goods purchased from the Supplier are sold, used or distributed after any 'best-before' or 'use-by' dates included on the Goods or their packaging. To the extent that the Goods are sold or otherwise used or distributed by the Customer after any such date it shall be at the Customer's sole risk and the Customer shall compensate and hold the Supplier harmless against any losses, claims, expenses or damages it incurs howsoever resulting from the same.
- 5.4 Subject to clause 5.5, if:
- (a) during the Warranty Period, the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option and to the extent that it agrees that such Goods do not comply with the warranty set out in clause 5.1, replace the defective Goods, or refund the price of the defective Goods in full.
- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving notice;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or manufacturer's written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the Customer alters such Goods without the written consent of the Supplier;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 These Conditions shall apply to any replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until;
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the Customer's ongoing financial position.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
 - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may:
- (a) by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Customer to deliver up all Goods in its possession and control that have not been resold or irrevocably incorporated into another product, and if

the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored, to recover them. The Customer shall procure entry to any such third party's premises if requested to do so by the Supplier.

7. Price and payment

- 7.1 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 Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may amend its prices at any time.
- 7.3 The Supplier may increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, labour, materials, and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give or delay by the Customer in giving the Supplier adequate or accurate information or instructions.
- 7.4 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery pursuant to clause 4.4.
- 7.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) on the date of the invoice or in accordance with any credit terms agreed in writing by the Supplier; and
 - (b) in GB Pounds sterling in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 7.7 Any credit terms are subject to the Customer passing the Supplier's credit checks. Any credit account must be paid within 14 days of the month following the credit invoice date or as confirmed by the Supplier to the Customer from time to time. Any credit terms maybe withdrawn at any time at the sole discretion of the Supplier and immediately where the Customer suffers an insolvency event, where there is an adverse change in the Customer's credit rating, if the credit insurance held by the Supplier in respect of the Customer account is reduced, withdrawn or ceases to be available at reasonable commercial rates.
- 7.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Supplier reserves the right to add a late payment charge of £25 in any 1 month for late payments of overdue accounts and to add a charge of £10 for any dishonoured bank transactions which the Parties agree is a reasonable reflection of the administration and management time involved in dealing with a late payment or dishonoured bank transaction. The Supplier reserves the right to pass on the charge-back- fee from a credit card company or issuing bank which has been received by the Supplier to the customer.
- 7.9 All amounts due under the Contract shall be paid in full without any off-setting with a counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.10 Any credit notes must be claimed within 6 months from their tax date failing which they are invalid and unable to be claimed.
- 7.11 Any overpayments which have been left on a Customer's account for a period of 6 (six) months or more will be cleared off the account and paid to a charity of the Company's choice.
- 7.12 The Supplier may at any time without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.13 The Customer declares that they are a business registered within the UK and that they are the final end user of the products and any packaging supplied by the Supplier in accordance with the Packaging End User Declaration as set out at the end of this agreement.

8. Limitation of liability

- 8.1 The limits and exclusions in this clause 8 reflect the insurance cover the Supplier has been able to arrange. The Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.
- 8.3 Nothing in the Contract limits any liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987;
 - (e) any liability that cannot legally be limited; or
 - (f) the Customer's payment obligations under the Contract.
- 8.4 Subject to clause 8.3, the Supplier's liability to the Customer arising out of damaged or defective goods is limited to replacing the whole or any part of the respective Goods or at the Supplier's option refunding or crediting the purchase price or pro-rata portion of the purchase price relating to the damaged or defective Goods.
- 8.5 In all other circumstances and subject to clause 8.3 the Supplier's liability arising out of or in connection with any order by the Customer for the supply of goods is limited to the price of the Goods in that Order.
- 8.6 Subject to clause 8.3, the following types of loss are wholly excluded:
- (a) loss of profits (including loss of anticipated savings);
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of use or corruption of software, data or information;
 - (e) loss of or damage to goodwill; and
 - (f) indirect or consequential loss.
- 8.7 This clause 8 shall survive termination of the Contract.

9. Intellectual Property

- 9.1 Copyright and all other intellectual property rights in the Products shall remain at all times the property of the Supplier or manufacturer. The Customer shall acquire no rights in the Products except as expressly provided for in these Terms and Conditions.
- 9.2 The Customer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Supplier's websites. The Customer may not use the Supplier's websites or their content for any commercial purpose (including the collection and use of any listings, descriptions, or prices), make any derivative or commercially exploitative use of the websites or their content, download or copy account information, use any data mining, robots or similar data gathering and extraction tools without the explicit written consent of the company. Any unauthorised use terminates any permissions granted.

10. Termination

- 10.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of it being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Supplier may suspend supply of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which the Customer shall pay immediately on receipt.
- 10.5 Termination of the Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. Force majeure

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 60 days, the party not affected may terminate the Contract by giving not less than 20 days' written notice to the affected party.

12. Data Protection

- 12.1 "Data Protection Legislation" shall mean the UK Data Protection Legislation and any other European Union legislation (including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018) and all other applicable legislation and regulatory requirements relating to Personal Data in force from time to time.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation.

13. General

13.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, (provided that it gives prior written notice of such dealing to the Customer).

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

13.2 Entire agreement

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

13.3 The Supplier reserves the right to amend these Terms and conditions from time to time by posting the updated version on the Supplier website.

13.4 Waiver

- (a) Waiver of any right or remedy is only effective if given in writing.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

13.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 13.5, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.6 Governing law

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales

13.7 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Packaging end user declaration:

In the UK, a packaging end-user declaration refers to a formal statement confirming that a recipient of packaging (a business or public institution) is the final consumer of the packaging and will not supply it to anyone else. This is used in the context of Extended Producer Responsibility (EPR) for packaging, where businesses are responsible for the cost of collecting and recycling packaging waste.

Here's a more detailed explanation:

Why is it needed?

Under EPR regulations, businesses are responsible for the packaging they place on the market, including the cost of its collection and recycling.

For packaging supplied directly to a business or public institution, the responsibility for recycling can be shifted to that recipient if they are the final consumer and don't resell the packaging.

This "end-user" declaration provides evidence that the business is indeed the final consumer, which helps businesses comply with EPR regulations.

Holdsworth Foods is a wholesale distributor of frozen, chilled and ambient goods to the catering trade.

By agreeing to this Agreement you declare that you are a business registered within the UK and that you are the final end user of the products and any packaging supplied by Michael I Holdsworth Limited.