

A.F. Blakemore and Son Ltd Blakemore Meats Division Terms and Conditions of Trading

The Buyer's attention is in particular drawn to the provisions of clause 10.4. The Company may update these Conditions periodically and will be made available on the website. It is the Buyer's responsibility to check the website regularly to ensure the Buyer is aware of and understands the Conditions which apply on the date the Buyer places any order with the Company. Please read these Conditions carefully and ensure that you understand them before placing an order for Goods and/or Services with us.

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these Conditions.

Buyer: the person, firm or company whose order for goods is accepted by the Company.

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

Company: A.F. Blakemore and Son Limited (Company number: 00391135) with registered office at of Long Acres Industrial Estate, Rosehill, Willenhall, West Midlands WV13 2JP, trading as Blakemore Meats.

Conditions: refers to these Terms and Conditions of Trading, which may be updated from time to time.

Contract: the contract between the Company and the Buyer for the sale and purchase of the Goods, in accordance with these Conditions.

Delivery Point: the place where delivery of the Goods is to take place under clause 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Order: means the Buyer's order for the Goods in the Buyer's purchase order form, the Buyer's written acceptance of the Company's quotation, or overleaf, as the case may be.

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

- 1.2. A reference to a 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.
- 1.6. A reference to **writing** or **written** includes email but not fax.

2. BASIS OF THE CONTRACT

- 2.1. The Buyer entering into a transaction with the Company expressly warrants that it is authorised to accept and accepts these Conditions not only for itself but also as agent for and on behalf of all other persons who are or may thereafter become interested in the Company's Goods whether in whole or in part.
- 2.2. These Conditions apply to the Contract to the exclusion of all other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, order form, confirmation of order, specification or other document or any other terms and conditions which the Buyer seeks to impose or incorporate or which are implied by law, trade custom, practice or course of dealing. These Conditions shall be deemed to be incorporated in all documents emanating from the Company and acceptance of delivery of the Goods from the Company shall be conclusive evidence before any court or arbitrator that the Conditions apply to the sale of such Goods.
- 2.3. No terms or conditions endorsed on, delivered with, or contained in the Buyer's Order, specification or other

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document shall form part of the Contract simply as a result of such document being referred to in the Contract.

- 2.4. The Buyer 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.
- 2.5. Each Order by the Buyer from the Company constitutes an offer by the Buyer to buy Goods subject to these Conditions. It is the buyer's responsibility to ensure that the terms of any Order are complete and accurate.
- 2.6. The Order shall only be deemed to be accepted by the Company on the earlier of i) the Company delivering the Goods to the Buyer; or ii) the Company issuing a written acceptance of the Order at which point the Contract shall come into existence.
- 2.7. A quotation for the Goods by the Company shall not constitute an offer. Unless otherwise stated in writing, any quotation is valid until midnight on the day that it is given, provided that the Company has not previously withdrawn it and unless otherwise stated is an illustrative estimate only and the price charged will be the Company's price current at the date of delivery.
- 2.8. Where there is a written trading or other agreement between the Company and the Buyer the terms of that agreement will take precedence, in the event of any inconsistency between these conditions and that agreement.
- 2.9. The Company reserves the right not to accept the Order, or, if accepted, not to deliver the Order until all outstanding payments have been received by the Company. The Company reserves the right to vary or withdraw a customer's credit limit as the Company shall in its absolute discretion see fit and the Company shall be entitled to refuse to deliver the Goods on credit whether an order has been accepted or not, should the Company consider it appropriate in all the circumstances.

3. GOODS

- 3.1. The quantity and description of the Goods shall be as set out in the Company's written acceptance of Order or delivery note.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising produced by or on behalf of the Company and any descriptions or illustrations contained in the Company's catalogues or brochures (whether digital or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and they shall not have any contractual force.

4. DELIVERY

- 4.1. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at either the Company's or the Buyer's place of business.
- 4.2. The Buyer shall take delivery of the Goods within the stipulated time frame agreed.
- 4.3. Any dates and/or times specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates and/or times are specified, delivery shall be made within a reasonable time.
- 4.4. 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 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 Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.
- 4.5. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or the Company suspends delivery of the Goods:

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- 4.5.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 4.5.2. the Goods shall be deemed to have been delivered; and
 - 4.5.3. the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, demurrage, handling fees and insurance).
- 4.6. The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading of the Goods and the Company may decline to deliver Goods to the Buyer if in the Company's opinion, it would be unsafe, unlawful, unreasonably difficult to do so or if the layout or condition of the Buyer's premises makes it unsuitable to do so.
- 4.7. If the Company delivers to the Buyer a quantity of Goods of less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them because of the shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.9. At the time of delivery, the Buyer shall sign all appropriate documentation as requested by the Company thereby evidencing that the Goods have been duly delivered to the Buyer.

5. NON-DELIVERY/RETURNS

- 5.1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery, unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives notice to the Company of the non-delivery within 1 Business Day of the date when the Goods would in the ordinary course of events have been collected or delivered.
- 5.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.4. The Company does not operate a "sale or return" policy.
- 5.5. The Buyer may not return Goods without the issue of an appropriate uplift note which must be signed both by the Company's driver and the Buyer as evidence of the Goods collected on behalf of the Company. An uplift note is issued by the Company solely as a record of collection and does not constitute a guarantee of credit the issuance of which shall remain at the sole discretion of the Company.
- 5.6. The Buyer shall return all cages and returnable containers to the Company in good condition.

6. RISK/TITLE

- 6.1. Risk in the Goods shall pass to the Buyer upon completion of delivery of the Goods.
- 6.2. Title in the Goods shall not pass to the Buyer until the Company has received payment in full in cleared funds of all sums due to it in respect of:
- 6.2.1. the Goods; and
 - 6.2.2. all other sums which are or which become due to the Company from the Buyer on any account in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 6.2.3. the Buyer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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- 6.3. Until title to the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4. maintain the Goods 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 Buyer shall produce the policy of insurance to the Company.
- 6.4. Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of business (but not otherwise) before ownership has passed to it solely on the following conditions:
- 6.4.1. any sale shall be affected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal, and not as the Company's agent, when making such a sale; and
 - 6.4.3. title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5. At any time before title to the Goods passes to the Buyer, the Company may:
- 6.5.1. by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - 6.5.2. require the Buyer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 6.6. The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.6.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 over 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; or
 - 6.6.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/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; or
 - 6.6.3. the Buyer encumbers or in any way charges any of the Goods.
- 6.7. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.8. The Buyer grants 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 to possession has terminated, to recover them.
- 6.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

7. PRICE

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- 7.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price current at the time of delivery. The Company reserves the right to adjust the price of Goods prior to delivery of all or any portion of the Goods
- 7.2. The price for the Goods shall be exclusive of any value added tax.
- 7.3. The Company may invoice the Buyer for the Goods at any time on or after the completion of delivery pursuant to clause 4.

8. PAYMENT

- 8.1. Subject to clause 8.3, payment of the price for the Goods is due in pounds sterling by BACS, cheque, debit or credit card payments upon delivery, unless otherwise agreed in writing by the Company. Time for payment shall be of the essence.
- 8.2. 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. No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.3. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.4. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act").
- 8.5. If the Buyer fails to pay to the Company any sum due pursuant to the Contract, if the Buyer becomes insolvent or subject to any of the events in clause 6.6 or if the Buyer breaches any of these Conditions or any other provisions of the Contract, then without prejudice to the other provisions of these Conditions and to any other right or remedies available to the Company the Company shall be entitled to:
 - 8.5.1. cancel the Contract or suspend any further deliveries to the Buyer under the Contract without any liability to the Buyer and if any Goods have been delivered to the Buyer and not paid for the price will become due and payable immediately notwithstanding any previous agreement or arrangement to the contrary;
 - 8.5.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
 - 8.5.3. cancel any discount offered to the Buyer;
- 8.6. If the Buyer fails to pay to the Company on the due date any sum payable pursuant to the Contract the Company shall be entitled to:
 - 8.6.1. claim fixed sum compensation from the Buyer under section 5A of the Act to cover the Company's credit control overhead costs; and
 - 8.6.2. recover under clause 8.8 the cost of any legal action taken by the Company against the Buyer in respect of any failure to pay.
- 8.7. If at any time, there shall be any sums outstanding from the Buyer to the Company, the Company will have a lien over any of the Buyer's property which is in the Company's possession.
- 8.8. In the event that the Buyer fails to pay to the Company on the due date any sum payable pursuant to the Contract or is in breach of any of its obligations under the Contract, all costs and expenses incurred by the Company including those incurred in the recovery of the outstanding sum shall be recoverable from the Buyer on a full indemnity basis (including all legal and debt recovery costs).
- 8.9. Without prejudice to its other rights and remedies, the Company reserves the right to charge the Buyer a £100 fee (or such other amount as the Company may notify the Buyer from time to time) for any direct

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debits which do not clear fully into the Company's bank accounts or for any missed payments or payments which do not clear or are bounced back.

9. QUALITY

9.1. The Company warrants that (subject to the other provisions of these conditions) on delivery, the Goods shall:

- 9.1.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.1.2. be fit for purpose held out by the Company;

9.2. The Company shall not be liable for a breach of the warranty in clause 9.1, unless:

- 9.2.1. the Buyer gives notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 1 Business Day of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.2.2. 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. If it is subsequently determined that such Goods were not defective or that any defect was not caused as a result of any action or omission of the Company, then the Company reserves the right to charge the Buyer for the costs involved in the return and examination of such Goods.

9.3. The Company shall not be liable for a breach of the warranty in clause 9.1 if:

- 9.3.1. the Buyer makes any further use of such Goods after giving such notice; or
- 9.3.2. 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
- 9.3.3. the Buyer alters such Goods without the written consent of the Company.

9.4. Subject to clause 9.2 and clause 9.3, if any of the Goods do not conform with the warranty in clause 9.1 the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.5. If the Company complies with clause 9.4 it shall have no further liability for a breach of the warranty in clause 9.1 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1. Subject to clause 4, clause 5 and clause 9, 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:

- 10.1.1. any breach of these Conditions;
- 10.1.2. any use made or resale by the Buyer of any of the Goods; and
- 10.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. 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.

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

- 10.3.1. for death or personal injury caused by the Company's negligence; or
- 10.3.2. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.3. for fraud or fraudulent misrepresentation.

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10.4. Subject to clause 10.2 and clause 10.3:

- 10.4.1. 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
- 10.4.2. the Company shall not be liable to the Buyer for loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill 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.

10.5. The Company accepts no liability for use of the Goods or sale of the Goods by the Buyer after expiry of the shelf-life period for such Goods.

11. TERMINATION

11.1. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- 11.1.1. the Buyer commits a material breach of any of the Contract and if (such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- 11.1.2. the Buyer 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;
- 11.1.3. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.4. the Buyer'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

11.2. Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 11.1.1 to clause 11.1.4 above, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract or any other contract between the Buyer and the Company on the due date for payment.

11.3. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay amount due under the Contract on the due date for payment. Without prejudice to the foregoing, the Company may in the event of the Buyer's default in paying any sum due under the Contract or any other contract, suspend delivery of the Goods until such default shall have been remedied in full.

11.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

11.5. Termination of the Contract, however 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.

11.6. 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.

12. ASSIGNMENT

12.1. The Company may assign the Contract or any part of it to any person, firm or company without prior consent.

12.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company 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), non-performance by suppliers or sub-contractors, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. GENERAL

- 14.1. No agent or employee of the Company has the Company's authority to alter or vary these Conditions, unless it is in writing and signed by a Director of the Company.
- 14.2. 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.
- 14.3. If any provision of 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 be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.4. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5. 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.
- 14.6. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 14.7. Any notice shall be deemed to have been received:
 - 14.7.1. if delivered by hand, at the time the notice is left at the proper address;
 - 14.7.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 14.8. Clause 14.6 and clause 14.7 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.9. The Contract, and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.