

TERMS AND CONDITIONS OF TRADE

These terms (the "Terms") define the agreement for the supply of products ("Goods") from Westfalia Fruit UK Limited (registered number 03953231) whose registered office is at 42 King's Hill Avenue, West Malling, Kent ME19 4AJ ("Supplier") to any purchaser ("Customer").

1. Formation of Contract

- 1.1. A binding agreement ("Contract") for the supply of Goods from the Supplier to the Customer is only formed once the Customer has submitted an order for the Goods ("Order") and the Order has been accepted in writing by the Supplier or the Supplier has begun to execute the Order.
- 1.2. Contracts are subject to these Terms and any terms set out in the relevant Order only and any other terms and conditions shall be of no effect.
- 1.3. Any amendments made to the Order shall only be binding upon the Supplier if they have been accepted in writing by the Supplier.
- 1.4. If the Supplier does agree to the Customer cancelling an Order then (other than where such cancellation is due to the Supplier's breach or negligence) the Customer will reimburse the Supplier in respect of all losses and expenses suffered by the Supplier arising out of or in connection with such cancellation.

2. Price and Payment

- 2.1. The time of payment for the Goods shall be of the essence. Payment for Goods shall be due 28 days from the date of invoice for such Goods, unless expressly agreed otherwise in writing by a Director of the Supplier.
- 2.2. If the Customer fails to pay for any Goods on time or if the Supplier believes that the Customer is likely to default in the future, then all amounts owed by the Customer to the Supplier under any Contract shall be immediately due and payable.
- 2.3. All payments, unless otherwise agreed in writing by the Supplier, shall be made by the Customer in sterling by BACS or CHAPS transfer to such bank account as the Supplier may from time to time notify in writing to the Customer.
- 2.4. Without prejudice to any other rights the Supplier may have, failure to pay the price or part of it for any Goods or other monies payable by the Customer pursuant to these Terms shall entitle the Supplier, at the Supplier's sole discretion, to charge in addition to any monies due, interest on the outstanding amount at the rate per annum of 8 per cent. above the base rate from time to time of the Supplier's bankers calculated on a daily basis from the date the payment became due until the date the payment is made.
- 2.5. The price for the Goods under a Contract shall be as set out in the relevant Order or as otherwise agreed by the Supplier and the Customer, subject to Terms 2.6 and 2.7. Unless otherwise stated, the price for the Goods under an Order includes the cost of delivery and is stated as a price per box but excludes VAT and other applicable taxes, duties or levies of any kind whatsoever.
- 2.6. Where the Supplier and the Customer have agreed that Goods shall be supplied to the Customer from the Supplier on a commission basis, the price for such Goods due to be paid by the Customer shall be the price for which the Goods have been sold by the Customer less a rate of commission agreed by the Supplier and the Customer.
- 2.7. The price agreed to be paid by the Customer for the Goods set out in the Order or otherwise may be increased by the Supplier to the extent that the costs levied by a third party on the Supplier have increased. The Supplier shall inform the Customer of any such price increases as soon as practicable.
- 2.8. The Customer shall not be entitled to make any deduction from any payment due to the Supplier in respect of any set-off or counterclaim unless the validity and the amount of such deductions have been expressly accepted in writing by the Supplier.

3. Termination

- 3.1. Without prejudice to any other right or remedy it might have, the Supplier shall have the right to terminate any Contract on immediate notice if:
 - 3.1.1 the Customer ceases or threatens to cease to carry on business, becomes unable to pay its debts (as that phrase is defined in the Insolvency Act 1986 Section 123), has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolutions passed for it to be wound up (otherwise than in furtherance of any scheme for amalgamation or reconstruction) or undergoes any similar or equivalent process in any jurisdiction;

- 3.1.2 it appears to the Supplier that the Customer may become unable to pay its debts or satisfy its obligations under any Contract in due time; or
- 3.1.3 the Customer is in breach of any material term or condition under any Contract.

- 3.2. The Supplier may give the Customer at any time five business days' notice in writing to terminate any or all Contracts between them.

- 3.3. On termination of a Contract, for whatever reason, the Customer shall pay immediately all amounts outstanding to the Supplier.

4. Retention of Title

- 4.1. Subject to Term 4.2, the Supplier reserves the title to all Goods supplied by it to the Customer until the purchase price for such Goods has been received in full by the Supplier and all accounts due from the Customer to the Supplier have been paid in full. If the Customer fails to comply with its payment obligations (in whole or in part) under any Contract, then the Supplier shall be entitled to take, in addition to all other rights, such measures as may be reasonably necessary to enter any premises of the Customer to recover possession of such Goods.
- 4.2. The Supplier reserves the title to all Goods supplied by it to the Customer on a commission basis until such Goods have been sold by the Customer. Until the title is transferred, the Supplier shall be entitled to take, in addition to all other rights, such measures as may be reasonably necessary to enter any premises of the Customer to recover possession of such Goods.
- 4.3. Until the title of Goods supplied has been transferred to the Customer it must refrain from pledging such Goods or granting any other rights over them to any third party.
- 4.4. Until the title of Goods has been transferred to the Customer, the Customer shall ensure that all Goods are stored separately and in such a way as to be readily identifiable as the property of the Supplier and easily removable by the Supplier. The Customer shall exercise due care and diligence over the Goods while they are in its custody and shall ensure that the Goods are properly insured and maintained in the condition in which they were delivered and shall make good any damage or deterioration.
- 4.5. Notwithstanding where title in the Goods lies, the Supplier may maintain the action for the price of the Goods once payment has become due to the Supplier.

5. Claims

- 5.1. The delivery times stipulated by the Supplier are in all cases approximate and time of delivery shall not be of the essence.
- 5.2. The Customer must check the Goods upon delivery. Any claims relating to Goods delivered in a damaged or defective state or any shortfall in any delivery must be submitted in writing to the Supplier within 24 hours from the time of delivery, in the absence of such claim the Goods will be considered to have been accepted irrevocably and unconditionally by the Customer. Any shortfall in the quantity of the Goods delivered from that stated in any Contract shall not give rise to a right to claim for breach of contract solely as a result of such shortfall but the Customer shall only be obliged to pay for the quantity of the Goods delivered.
- 5.3. Where a delivery of products includes Goods with minor blemishes, bruises or other defects (including differential sizes) then as long as such defects are minimal they will not entitle the Customer to reject that delivery or any other delivery pursuant to any other Contract.

6. No Warranties

The Supplier excludes all warranties relating to the Goods so far as permitted by applicable law.

7. Liability

- 7.1. Subject to Term 7.3, the Supplier excludes all liability for any consequential loss, indirect loss or loss of profits suffered or incurred by the Customer due to the Supplier's breach of a Contract or negligence.
- 7.2. Subject to Terms 7.1 and 7.3, the total liability of the Supplier to the Customer in respect of any breach of a Contract or negligence shall not exceed an amount equal to the net invoice value of the Goods delivered which led to the relevant loss or damage.
- 7.3. The Supplier does not exclude or limit its liability for death or personal injury caused by negligence or for its fraudulent misrepresentation.

8. Indemnification

The Customer shall (and shall ensure that any third party to whom any Goods may subsequently be supplied) comply with all instructions and recommendations of the Supplier in relation to the storage, supply and use of the Goods, and, save to the extent caused by the negligence or breach of a Contract of or by the Supplier, the Customer shall keep the Supplier fully and effectively indemnified (on an after tax basis) against all costs, claims, demands, expenses and liabilities of whatsoever nature and wheresoever arising which may be made against the Supplier or which the Supplier may sustain, pay or incur arising out of or in connection with the Customer's failure so to comply and/or to ensure that any third party to whom any Goods have subsequently been supplied so complies.

9. Force Majeure

- 9.1. The Supplier shall not be liable for any loss or damage that may be suffered by the Customer due to force majeure.
- 9.2. For the purposes of Term 9.1, "force majeure" shall be deemed to be any act, event, omission or accident beyond the reasonable control of the Supplier and shall include, without limitation, any Act of God, inclement weather, flood, drought, lightning, disruption to transport, epidemics, fire, theft, strike, trade disputes or labour disturbance, disruption of power supply, the act or omission of Government, highway authorities, public telecommunications, war or the danger of war, military operations, riot or civil disorder, as well as any default by the suppliers of the Supplier which results in the Supplier being no longer able to meet its obligations to the Customer.

10. Severability

Except in so far as the context otherwise requires, each provision in these Terms shall be construed as independent of every other provision, and if any such provision is or becomes partially or totally invalid or unenforceable then the validity and enforceability of the remaining provisions shall not be affected.

11. Entire Agreement

These Terms and the term of each Contract constitute the whole agreement and understanding between the parties relating to their subject matter and supersede all prior discussions and agreements (whether oral or written) between the parties and/or their agents or advisers.

12. Waiver

A failure by either party to exercise or enforce any right conferred upon it under a Contract shall not be deemed to be a waiver of such right or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

13. Confidentiality

The Customer shall at all times use its best endeavours to keep any confidential information relating to the Goods or to the Supplier's business confidential, whether such information is disclosed to it by the Supplier or whether it comes to the Customer's knowledge by other means and whether or not it is expressly stated to be confidential or marked as such, and not to disclose it to any other person and shall not use any such confidential information for any purpose other than the performance of its obligations under a Contract provided that this restriction shall not extend to any confidential information to the extent which:-
13.1. The Customer is required to disclose pursuant to a binding order of any governmental or other authority or regulatory body with jurisdiction;
13.2. is at the date of receipt of the information by the Customer, or becomes thereafter, public knowledge through no fault of the Customer; or
13.3. can be shown by the Customer, to the reasonable satisfaction of the Supplier, to have been known to the Customer prior to it being disclosed to the Customer by the Supplier.

14. Governing Law

All Contracts (and these Terms) shall be governed by English law and the Supplier and the Customer submit to the non-exclusive jurisdiction of the English Courts in relation to any dispute relating to them.