



JFS
Joseph Flach & Sons

GENERAL TERMS AND CONDITIONS OF SALE OF GOODS

1. DEFINITIONS

In these Terms & Conditions:

- 1.1 'JFS' and 'the Seller' mean Joseph Flach & Sons Limited, (registered in England under number 00218842) whose registered office is at 24/25 Maxwell Road, Woodston, Peterborough, Cambridgeshire, PE2 7JD.
- 1.2 'Buyer' means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods.
- 1.3 'Contract' means the particular individual contract for the supply of the Goods by the Seller to the Buyer.
- 1.4 'Goods' means the goods or materials supplied or sold by the Seller to the Buyer.
- 1.5 'Order' means an order placed for the Goods.
- 1.6 'Sales Order Confirmation' means the document entitled sales order confirmation generated by the Seller and sent by post, fax or e-mail by the Seller to the Buyer.
- 1.7 'Special conditions' means such additional terms agreed from time to time in writing between the Seller and the Buyer.
- 1.8 'Delivery point' means the Buyer's place of business or alternative address if agreed between the Seller and the Buyer prior to dispatch of the goods.
- 1.9 To the extent of any conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail.
- 1.10 "In writing" is defined as communication by letter or email with proof of delivery or an acknowledgment.
- 1.11 In this document and in any Special Conditions:
 - 1.11.1 the headings are for convenience only and shall not affect the interpretation of this document or those Special Conditions;
 - 1.11.2 the use of the plural shall include the singular and the use of the singular shall include the plural;
 - 1.11.3 references to the masculine, feminine or neuter genders shall include each and every gender.

2. APPLICATION OF TERMS

- 2.1 These terms and conditions (the "Terms") of sale apply to all contracts of sale entered into by the Seller with the Buyer who purchases the goods agreed to be supplied to the Buyer by the Seller. Notwithstanding any conflict with any terms and conditions specified by the Buyer in the Buyer's order form or otherwise, the Seller's acceptance of the Buyer's order is on the condition that only these terms shall apply to the order. By acceptance of deliveries, the Buyer shall be deemed to accept the terms contained herein. Failure by the Seller to object to any term and condition contained in any communication from the Buyer shall not be deemed to be a waiver of these terms.
- 2.2 No variation of these terms shall be binding unless agreed in writing by a Director of the Seller. The Seller's employees are not authorized to make any representations concerning the Goods.
- 2.3 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative, or delivery of the Goods is made. All orders are accepted subject to the availability of the Goods at the time of dispatch.
- 2.4 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.5 Any quotation is given on the basis that no contract will come into existence until the Seller dispatches an acknowledgement of order to the Buyer. Any quotation is valid until the end of the day of trading on the day of offer unless otherwise stated, provided that the Seller has not previously withdrawn it.

3. PRICE

- 3.1 Unless otherwise stated in writing, prices quoted include the cost of delivery to the Buyer's premises in the UK mainland, but exclusive of taxes.
- 3.2 The price of the Goods shall be that agreed between the parties at the time the Seller accepts the Buyer's order.

4. DELIVERY

- 4.1 Unless otherwise agreed by the Seller, delivery of the Goods shall take place at the Buyer's place of business (the 'Delivery Point').



- 4.2 All delivery dates are given in good faith and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time. The Seller shall not be liable for delay in delivery due to circumstances beyond the reasonable control of the Seller. In the event of any such delay the date for delivery shall automatically be extended and the Seller will not be liable for any direct, indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or failure to deliver the Goods provided that such delay shall entitle the Buyer to rescind or terminate the Contract if such delay exceeds 180 days. For the purpose of this condition the term 'loss' includes a partial loss or reduction in value as well as complete or total loss.
- 4.3 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instruction, documents, licenses or authorisations:
- 4.3.1 risk in the Goods will pass to the Buyer;
 - 4.3.2 the Goods will be deemed to have been delivered; and
 - 4.3.3 the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance)
- 4.4 The Buyer will provide at its expense at the Delivery Point, adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.5 The Seller may deliver up to 5% less or more in weight in the quantity of Goods ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 4.6 Each delivery of the Goods by the Seller to the Buyer shall be a separate Contract except when the Contract is specifically for delivery by instalments and the Buyer shall not be entitled to withhold any payment due under the one Contract against any claim under the contract and failure to deliver or defect in one or more instalments shall not entitle the Buyer to reject the other instalments.
- 4.7 If the Goods or any part thereof supplied under the Contract are processed or altered in any way by the Buyer or receiver of the Goods or any other person, the quality of the Goods shall be deemed acceptable to the Buyer. All the Buyer's quality checks are to be completed on the entire load prior to use in production.
- 4.8 Where the Seller agrees or states a specified delivery date, the Seller shall use reasonable endeavours to deliver on or before the relevant date, but the Seller shall be under no obligation to do so.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Seller upon dispatch from the Seller'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 Seller shall not be liable for any non-delivery of Goods unless written notice is given to the Seller within seven days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Seller 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.

6. QUALITY

- 6.1 The Seller's only responsibility shall be to deliver the Goods in accordance with any formal written specification supplied by the Seller. If the Buyer wishes an alternative specification the Buyer must raise that issue prior to the Contract being entered into. If no specification has been given to the Buyer, a specification will be supplied to the Buyer on request and the Seller warrants that the Goods will comply with that specification.
- 6.2 The Seller shall be responsible for ensuring that the Goods when supplied are in accordance with any specification previously supplied. The Seller shall not be obliged to undertake any tests not relating to the specification. The Buyer shall in accordance with good manufacturing principles also check that the Goods meet the specification prior to using the Goods or supplying the Goods to a third party.
- 6.3 Where the Goods are pre-packaged goods that are sold on by the Seller in the same packaging as they are bought by the Seller, then in place of Clauses 6.1 and 6.2 above, the Seller's only obligation shall be to use its reasonable endeavours to pass on to the Buyer the warranties given to the Seller by the seller of the Goods to the Seller.
- 6.4 The Seller may by giving written notice or e-mail to the Buyer vary the specification of the Goods at any time. The Buyer may terminate this Contract by giving notice promptly after receipt of any such notice or e-mail. The Goods will be supplied substantially to the specification described. In the event of alteration to the weight or the packaging specification, orders will be delivered and invoiced accordingly.
- 6.5 The Seller shall not be liable for a breach of any of the warranties in conditions 6.1, 6.2 and 6.3 above unless:
- 6.5.1 for defects such as, but not limited to spillages, shortages, or infestations, which are obvious on delivery without the need for inspection, the Buyer gives written notice of the defect to the Seller within two working days from delivery, and (if the defect is the result of damage in transit) to the carrier at the time of delivery; or
 - 6.5.2 in the case of any other defect, the Buyer gives written notice of that defect to the Seller, and (if the defect is the result of damage in transit)



to the carrier, within five working days from delivery; and

6.5.3 the Seller and (if the defect is the result of damage in transit) the carrier, are given a reasonable opportunity after receiving the notice of examining the Goods.

6.6 The Seller shall not be liable for a breach of any of the warranties in conditions 6.1, 6.2 and 6.3 above if:

6.6.1 the Buyer makes any further use of such Goods after giving such notice under condition 6.5 above; or

6.6.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice; or

6.6.3 the Buyer alters such Goods without the written consent of the Seller.

(The Buyer's attention is drawn to the provisions of conditions 6.7, 6.8, 6.9, 6.10 and 6.11 below)

6.7 **Testing:** It is the Buyer's responsibility to check the suitability of any natural product supplied, to ensure it is fit for intended use. The Seller's specifications on natural products indicate testing levels to which it will release goods for sale, but the Seller does not offer a guarantee on any micro levels. If the Buyer is unsure of the suitability of a natural untreated product, please consult the Seller prior to buying the Goods and most importantly before using the Goods in production or re-sale.

6.8 **Infestation:** The Seller cannot guarantee that the Goods will not at a later date, be subject to infestation, unless specifically treated. Even after treatments, treated goods can be subject to re-infestation if incorrectly stored. Untreated seeds, herbs, spices and flowers in any form, treated with approved chemical fumigants, are still susceptible to possible infestation as insect eggs are not destroyed by current chemical fumigants.

6.9 **Content of specified product:** Due to the nature of many of the products supplied by the Seller, no guarantee can be given of 100% purity. Natural product supplied including untreated seeds, herbs, spices and flowers in any form, may contain matter which is not in accordance with the specification. In conjunction with clause 4.5, up to 5% of the weight ordered may be made up of matter different to that specified. It is the Buyers responsibility to ensure the matter used in its onward processes is fit for purpose and meets regulatory requirements.

6.10 Any images of the Goods on our website or anywhere else are for illustrative purposes only. Although we have made every effort to display the colours accurately, the colour of the Goods may vary from those images.

7. LIABILITY

7.1 Subject to condition 6, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees) to the Buyer in respect of any breach of these conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

7.2 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgement and not the Seller's in determining such suitability.

7.3 Subject to conditions 7.1 and 7.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or non-performance or late performance or contemplated performance of the Contract shall be limited to the price of the goods ordered in the Contract plus 20%.

7.4 Subject to conditions 7.1 and 7.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether the loss of profit, loss of sales, loss of turnover, loss of damage to business, loss of or damage to reputation, loss of contracts, loss of customers, wasted management or other staff time, losses or liabilities under or in relation to any other contract, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract. For the purposes of this condition the term 'loss' includes a partial loss or reduction in value as well as a complete or total loss.

7.5 Orders will be accepted subject to the satisfactory credit status of the Buyer and the Seller reserves the right to terminate the Contract in the event of the credit status of the Buyer, ceasing to be satisfactory to the Seller.

7.6 Details about the suppliers and manufacturers we use are confidential and commercially sensitive information which is valuable to our business. In the event that, having received information from the Seller about a supplier or manufacturer they use in the course of their business, the Buyer orders goods of a similar nature to the Goods direct from the supplier or manufacturer in question, the Buyer agrees to pay the Seller a sum equal to 30% of the purchase price paid for the relevant goods within 14 days of the date of purchase.

8. PAYMENT

8.1 Payment shall be made by the Buyer to the Seller in full within 30 days, unless otherwise agreed and confirmed in writing by the Seller. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer. If the Buyer fails to pay the Seller any sum due, the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of HSBC plc, accruing on a daily basis until payment has been made whether before or after



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any judgement. The Seller reserves the right to suspend any further deliveries and cancel any orders from the Buyer in the event that any monies under any contract between the Buyer and the Seller are outstanding.

- 8.2 The Buyer hereby agrees that in the event that any cheque, bill of exchange, promissory note or other negotiable instrument is dishonoured or returned to the Seller's bank unpaid for any reason, the Seller shall be entitled to invoice the Buyer for all reasonable sums due including costs relating to bank charges incurred and the cost of any related administrative activities. In the event that the charges mentioned herein as debited to the Buyer's account remain unpaid for the period agreed in the invoice, the Seller shall be entitled to charge interest at the annual rate of 3% above the base-lending rate from time to time of HSBC plc.

9. RISKS AND TITLE

- 9.1 Risk shall pass on delivery at the Delivery Point. If the Buyer fails to take delivery of the Goods, or fails to provide adequate delivery instructions then, without limitation, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance or storage); or sell the Goods elsewhere.
- 9.2 The Goods are at the risk of the Buyer from the time of delivery. Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Seller from the Buyer on any account.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer must
- 9.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
 - 9.3.1 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 9.3.2 not destroy or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.3 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the seller.
- 9.4 The Buyer may resell the Goods before ownership has passed to it solely on condition that any sale shall be effected on the ordinary course of the Buyer's business at full market value and any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 9.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in separate identifiable existence and have not been resold) the Seller, its agents and employees shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

10. TERMINATION

- 10.1 The Buyer's right to possession of the Goods shall terminate immediately if:
- 10.1.1 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 Act for the time being in force for the relief of insolvent debtors, or (being a corporate body) 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 of its undertaking or any part thereof, 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 relation to the insolvency or possible insolvency of the Buyer; or
 - 10.1.2 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/perform any of his/its obligations under the Contract or any other contract between the Seller 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
 - 10.1.3 the Buyer encumbers or in any way charges any of the Goods.

11. FORCE MAJEURE AND HARDSHIP

- 11.1 In this Clause 11, "Force Majeure Event", means an event wholly beyond the reasonable control of the party claiming the benefit of the Clause including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure by a statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage or significant price increase of power, fuel, raw material or transport, any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the Clause relies thereon.
- 11.2 Neither party shall be under any liability to the other party in respect of any failure or delay in performing any of its contractual obligations to the other party (other than any obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract. The party seeking to take advantage of the Clause 11 shall:
- 11.2.1 give the other party notice as soon as reasonable practicable of the said Force Majeure Event; and
 - 11.2.2 use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the said failure or delay.



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12. ASSIGNMENT

- 12.1 The Buyer shall not be entitled to assign the benefit or burden of the whole or part of any Contract without the prior written consent of the Seller.
- 12.2 The Seller may assign the Contract or any part of it to any person, firm or company.

13. EXPORT SALES

- 13.1 The provisions of this Clause 13 shall apply only where the Sales Order indicates that an Incoterm applies to the Contract.
- 13.2 The sale of the Goods is subject to the Incoterm (if any) stated in the Sales order. In the event of any conflict between the provisions of Incoterms and these Conditions, then (subject only to the provisions of Clause 4.8) these Conditions shall prevail.
- 13.3 It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to any Contract pursuant to these Conditions.
- 13.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.
- 13.5 Unless otherwise agreed in writing the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

14. GENERAL

- 14.1 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 14.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 14.3 The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract and this Contract shall not confer any right on a Third Party under that Act or otherwise.

15.0 PROPER LAW

- 15.1 Every contract to which these Conditions apply shall be construed and take effect in accordance with the laws of England and the parties hereby accept the exclusive jurisdiction of the English Courts.